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MONTANA LEGISLATIVE HISTORY

Chapter 147 Session L 1979
Bill House _____ Senate 175

History and final status sheet NA
Introduced bill X
Fiscal note X
Third reading bill X
Final version of bill X

House Committee on Human Services

Hearing date(s)* 2-28

Executive action (vote) date(s)* 2-28

Comm. Report not available

Floor 2nd reading & vote 3-2

Floor 3rd reading & vote 3-5

Senate Committee on Public Health

Hearing date(s)* 1-29 2-5
1-31

Executive action (vote) date(s)* 2-5

Comm. Report not available

Floor 2nd reading & vote 2-14; 3-7

Floor 3rd reading & vote 2-16; 3-8

Conference or Free Conference Comm. _____ Yes X No

Hearing date(s)* _____

Executive action (vote) date(s)* _____

* Includes minutes, exhibits, roll call, visitors register, and vote sheet if available.

Did this bill originate in an interim committee? _____ Yes X No

Committee _____ Report _____

NOTES: By the request of the Dept. of Health & Environmental Services



Compiled by: rg

Date: 10-30-19

CHAPTER NO. 147.

SENATE BILL NO. 175

INTRODUCED BY VAN VALKENBURG, OLSON, COONEY, ELLIS,
BENNETT, TURNAGE, HIMSL, TOWE, B. BROWN

BY REQUEST OF THE DEPARTMENT
OF HEALTH AND ENVIRONMENTAL SCIENCES

IN THE SENATE

January 19, 1979	Introduced and referred to Committee on Public Health, Welfare, and Safety.
February 10, 1979	Committee recommend bill do pass as amended. Report adopted.
February 13, 1979	Printed and placed on members' desks.
February 14, 1979	Second reading, do pass.
February 15, 1979	Considered correctly engrossed.
February 16, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 17, 1979	Introduced and referred to Committee on Human Services.
March 1, 1979	Committee recommend bill be concurred in. Report adopted.
March 2, 1979	Second reading, concurred in as amended.
March 5, 1979	Third reading, concurred in as amended.

IN THE SENATE

March 6, 1979	Returned from second house. Concurred in as amended.
March 7, 1979	Second reading, amendments adopted.
March 8, 1979	Third reading, amendments adopted. Sent to enrolling. Reported correctly enrolled.

STATEMENT OF INTENT RE: S. B. NO. 175

A statement of intent is required for this bill because it provides the Department of Health and Environmental Sciences rule-making authority regarding implementation of this act.

Section 6 authorizes rule-making authority to implement Senate Bill 175 and is intended to authorize the Department of Health and Environmental Sciences to adopt, amend, or repeal rules, in accordance with the Montana Administrative Procedures Act, to require uniformity in reporting and recording the immunization status of each child enrolled in school, and determine appropriate schedules and agents for immunization. Such recording, reporting, and immunization must be compatible with current, recognized medical and public health practices.

Approved by the Senate Committee on Public Health, Welfare, and Safety on February 12, 1979.

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SENATE BILL NO. 175
INTRODUCED BY *Van Valkenburg, Olson, Correy, Ellis, Bennett, Turnage, Michael, Dan, Bob Bowen*
BY REQUEST OF THE DEPARTMENT
OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR
IMMUNIZATION OF PUPILS IN PUBLIC AND PRIVATE SCHOOLS;
REPEALING SECTION 20-5-401, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. For the purposes of [this
act], the following definitions apply:

(1) "Department" means the department of health and
environmental sciences provided for in Title 2, chapter 15,
part 21.

(2) "Governing authority" means a trustee of a school
district, a principal, an administrator, or any other
authority of a private or public school responsible for the
operation of the school.

(3) "Immunization" means induction of a state of
resistance to a disease through administration of an
immunizing agent.

(4) "Local health officer or department" means a city,
city-county, county, or district health officer or
department.

(5) "School" means an institution for the teaching of
individuals, the curriculum of which is comprised of the
work of any combination of kindergarten through grade 12.

Section 2. Immunization required. A governing
authority may not enroll any person as a pupil in any school
unless, prior to enrollment, the person:

(1) has been immunized against diphtheria, pertussis,
tetanus, poliomyelitis, rubella, and measles (rubeola) in
the manner and with immunizing agents approved by the
department, except that pertussis vaccination is not
required for a person 7 years of age or older;

(2) qualifies for conditional enrollment; or

(3) files for an exemption.

Section 3. Conditional enrollment. A person who has
not been immunized against each disease listed in [section
2] may be enrolled by the governing authority on condition
that he has received one or more doses of polio, measles
(rubeola), rubella, diphtheria, pertussis, and tetanus
vaccine, except that pertussis vaccine is not required for a
person 7 years of age or older.

Section 4. Personal, religious, or medical exemption.

(1) When a parent, guardian, or adult who has the
responsibility for the care and custody of a minor seeking
enrollment, or the person seeking enrollment, if an adult,
signs and files with the governing authority a written

1 statement on a form prescribed by the department stating
2 that immunization is contrary to the personal or religious
3 beliefs of the signer, immunization of the person seeking
4 enrollment may not be required prior to enrollment in any
5 school. The statement must be maintained as part of the
6 person's immunization records.

7 (2) When a parent, guardian, or adult who has the
8 responsibility for the care and custody of a minor seeking
9 enrollment, or the person seeking enrollment, if an adult,
10 files with the governing authority a written statement
11 signed by a physician licensed to practice medicine in any
12 jurisdiction of the United States or Canada stating that the
13 physical condition of the person seeking enrollment or
14 medical circumstances relating to him indicate that some or
15 all of the required immunizations are not considered safe
16 and indicating the specific nature and probable duration of
17 the medical condition or circumstances which contraindicate
18 immunization, he is exempt from the requirements of [this
19 act] to the extent indicated by the physician's statement.
20 The statement must be maintained as part of the person's
21 immunization records.

22 (3) Whenever there is good cause to believe that a
23 person for whom an exemption has been filed under this
24 section has a disease or has been exposed to a disease
25 listed in [section 2] or will as the result of school

1 attendance be exposed to such disease, the person may be
2 excluded from the school by the local health officer or the
3 department until the excluding authority is satisfied that
4 the person no longer risks contracting or transmitting that
5 disease. The exclusion period may not exceed 30 calendar
6 days.

7 Section 5. Immunization record. The governing
8 authority of each school shall require written evidence of
9 each pupil's immunization against the diseases listed in
10 [section 2] and shall record the immunization of each pupil
11 as part of his permanent school record on a form prescribed
12 by the department.

13 Section 6. Rulemaking. The department may adopt rules
14 necessary to implement the provisions of [this act].

15 Section 7. Enforcement. (1) The governing authority of
16 any school shall prohibit from further attendance any pupil
17 enrolled conditionally who has failed to obtain the
18 immunizations required by [section 2(1)] within time period
19 established by the department until that pupil has been
20 immunized as required by the department or unless that pupil
21 has been exempted under [section 4].

22 (2) Each governing authority shall file a written
23 report on the immunization status of all pupils under its
24 jurisdiction with the department and the local health
25 department at times and on forms prescribed by the

1 department.

2 (3) The local and state health departments shall have
3 access to all information relating to immunization of any
4 pupil in any school.

5 Section 8. Failure to immunize or claim exemption --
6 injunction. (1) A parent, guardian, or adult having the
7 responsibility for the care and custody of a minor required
8 by law to attend school shall elect to do one of the
9 following:

10 (a) present evidence to the school that the minor has
11 been immunized against the diseases specified in [section
12 2];

13 (b) take action to fully immunize the minor against
14 the diseases listed in [section 2], in the manner and with
15 immunizing agents approved by the department;

16 (c) file for an exemption pursuant to [section 4].

17 (2) If, as a result of the parent, guardian, or
18 responsible adult's failure to make the election referred to
19 in subsection (1), the minor is excluded from school, the
20 department or the local health department may seek an
21 injunction requiring the parent, guardian, or responsible
22 adult to elect and perform one of the alternatives listed in
23 subsection (1).

24 (3) Injunction is the exclusive remedy for failure to
25 take any of the actions referred to in subsection (1).

1 Section 9. Civil penalty. (1) Any person who violates
2 any provision of [this act], any rule promulgated under
3 [this act], or any order made pursuant to [this act], with
4 the exception of [section 8] and any rule adopted or order
5 issued pursuant to [section 8], is subject to a civil
6 penalty not to exceed \$1,000. The department or the local
7 health department may institute and maintain any enforcement
8 proceedings hereunder.

9 (2) Action under subsection (1) is not a bar to
10 enforcement of [this act] or of rules or orders made under
11 it by injunction or other appropriate civil remedies.

12 (3) An action for a civil remedy to enforce [this act]
13 or rules or orders made under it may be brought in the
14 district court of any county where a violation occurs or is
15 threatened.

16 Section 10. Severability. If part of this act is
17 invalid, all valid parts that are severable from the invalid
18 part remain in effect. If a part of this act is invalid in
19 one or more of its applications, the part remains in effect
20 in all valid applications that are severable from the
21 invalid applications.

22 Section 11. Codification. The code commissioner shall
23 codify this act as an integral part of Title 20, and the
24 provisions of Title 20 apply to this act.

25 Section 12. Applicability. Sections 1 through 5 and

LC 0290/01

- 1 sections 7 through 9 apply after August 1, 1980.
- 2 Section 13. Repealer. Section 20-5-401, MCA, is
- 3 repealed effective August 1, 1980.

-End-

STATE OF MONTANA

Request No. 482-79

FISCAL NOTE

Form BD-15

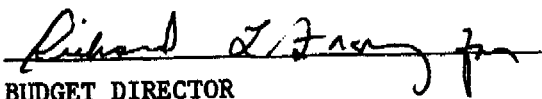
In compliance with a written request received March 19, 1979, there is hereby submitted a Fiscal Note for Senate Bill 175 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to provide for immunization of pupils in public and private schools.

FISCAL IMPACT:

None.


BUDGET DIRECTOR
Office of Budget and Program Planning
Date: 3/22/79

FIFTEENTH LEGISLATIVE DAY

Helena, Montana
January 19, 1979

Senate Chambers
Capitol Building

Senate convened at 3:00 p.m., President Mathers presiding. Invocation by the Chaplain. Pledge of Allegiance to the Flag.

Roll call. All members present except Anderson, Etchart, Graham, Thomas, excused. Quorum present.

REPORTS OF STANDING COMMITTEES

BILLS (Dover, Chairman):

Considered correctly engrossed - SB 73, SB 79. Report adopted.

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

The following House Bills were on 1/18/79, passed as amended and transmitted to the Senate for concurrence:

House Bill No. 10, introduced by Kvalen

House Bill No. 32, introduced by Quilici

The following House Bills were on 1/18/79, passed on Third Reading Consent Calendar and transmitted to the Senate for concurrence:

House Bill No. 17, introduced by Tropila

House Bill No. 98, introduced by Bardanouve

The following House Bills were on 1/18/79, passed as amended on Third Reading Consent Calendar and transmitted to the Senate for concurrence:

House Bill No. 18, introduced by Tropila

MOTIONS

Upon motion of Senator Turnage, duly carried, that consideration of Senate Bill No. 88 be passed for this day.

FIRST READING OF BILLS

The following Senate bills were introduced, read first time, and referred to committee:

SB 169, introduced by Palmer, Kessler, Johnston, Towe, Hager, Cooney, Boylan. Referred to Committee on State Administration.

SB 170, introduced by Rasmussen, B. Brown. Referred to Committee on Judiciary.

SB 171, introduced by Lockrem, Rasmussen, Thiessen, Towe. Referred to Committee on State Administration.

SB 172, introduced by Story, R. Smith. Referred to Committee on Taxation.

SB 173, introduced by Rasmussen, Hager, B. Brown, O'Hara. Referred to Committee on Taxation.

SB 174, introduced by Hager, Donaldson. Referred to Committee on Taxation.

SB 175, introduced by Van Valkenburg, Olson, Cooney, Ellis, Bennett, Turnage, Himsl, Towe, B. Brown, (By Request of the Department of Health and Environmental Sciences). Referred to Committee on Public Health, Welfare, and Safety.

SB 176, introduced by Fabrega, Roskie, Ramirez, Sivertsen, Moore, Marks, Underdal, Fagg, C. Smith, Ernst, Keyser, Spilker, Stobie,

MINUTES OF THE MEETING

PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE

January 29, 1979

The eighth meeting of the Public Health, Welfare and Safety Committee met on January 29, 1979, in Room 410 of the State Capitol Building at 12:30 p.m.

ROLL CALL: All members were present except Senator Rasmussen and Senator Ryan, who arrived later in the meeting. Senator Palmer was excused until 1:00 p.m.

CONSIDERATION OF SENATE BILL 186: Senate Bill 186 is an act to allow licensed foster parents of minor children to administer certain types of medications.

Senator Norman, sponsor of Senate Bill 186 by request of the Department of Social and Rehabilitation Services, said that this bill makes legal something that is desired and probably already being done. It relates to foster care of minors and even adults who are not legally competent. If a child is in a foster home, why is it that the foster parents cannot give medication.

Peter Surdock, Department of Social and Rehabilitative Services, introduced Mary Blake, a consultant on foster care. Ms. Blake stated that the department supports Senate Bill 186. The bill gives the foster parent the same right to administer drugs that a normal parent would have. See Attachment "A."

Ed Mares, Montana Nurses' Association, stated that the association supports Senate Bill 186, but it does have an amendment. See Attachment "B." The amendment would allow the board of Nursing to purpose any further exemptions under this section. Trudy Malone, Board of Nursing, stated that she believes the intent of the amendment is that next year if there is another category that comes up it wouldn't have to go through the Legislature again.

Senator Norman closed the testimony by stating that questions are certainly needed on the amendment.

Chairman Olson asked the Committee members if they have any questions. Senator Lensink said that he doesn't feel that the amendment fits. He feels that it is entirely out of the scope as it is written. Senator Lensink said that the title states one thing, and if you introduce this amendment it completely changes the bill. He also feels that it is unconstitutional to do this sort of thing. It would have to be proposed in another bill. Senator Himsel asked if these types of medications are spelled out someplace else in the law or if the bill just refers to whatever normal parents do. Senator Norman said that it would certainly be his intent that foster parents can do the same thing as natural parents, but no further. Senator Himsel wanted to know why the word "certain" was used in the title.

The hearing on Senate Bill 186 was closed at 12:45 p.m.

CONSIDERATION OF SENATE BILL 175: Senate Bill 175 is an act to provide for immunization of pupils in public and private schools.

Witnesses Supporting Senate Bill 175:

Dr. Skinner, Department of Health & Environmental Sciences
Dr. Jeffry Strickler, American Association of Pediatrics
Brian Zins, Montana Medical Association
Ed Mares, Montana Nurses' Association
William Leary, Montana Hospital Association
Allene Mares, Montana Association of Local Health Officers
Alice Armstrong, Montana School Nurses' Interest Group
Catherine Brown, School and County Nurse
Gene Dillman, Superintendent of Whitehall School Dis. 4, 47, & 2
Mrs. B. R. Edmission, Montana Federation of Women's Clubs
Martha Onishuk, Montana Parent-Teachers' Association
T. Carl Johnson, School Administrators of Montana
Chad Smith, Montana School Boards' Association
Harriett Meloy, Board of Education
Phil Campbell, Montana Education Association
David Lackman, Montana Health Association

Senator Van Valkenburg, at the request of the Department of Health and Environmental Sciences, sponsored Senate Bill 175. He feels that this legislation is something that is of a very positive benefit for the youth of our state. This legislation comes about because of difficulties ensued in enforcement of the existing statute 20-5-401. It is a one paragraph statement permitting local school boards to adopt immunization programs. It has several problems and inadequacies that school boards and children have run into across the state. It lacks any definitive statement of what immunizations may be required. It lacks provisions for students who do not want to be immunized. Senate Bill 175 lists the provisions of personal, religious, and medical exemptions in section 4 on page 2. Senator Van Valkenburg feels this is sufficiently broad to cover anyone who does not want to come within the limits of the plan. It provides for an enforcement provision so the board can come up with a plan to do this and so that the parents can either get their children immunized or elect the exemption provision. He stated that currently 75 percent of the children in Montana are covered, and this is extremely low. He feels that we can prevent disease outbreaks through the enactment of a law such as this.

Dr. Skinner, Department of Health and Environmental Sciences, spoke in support of Senate Bill 175. See Attachment "C." He outlined some of the points in his attachment. He pointed out that it is not common practice to immunize for some, and this causes the disease outbreaks. For example, mumps has tested the department's resources in the last few years. In Attachment "C" there is a graph that shows the mumps outbreak on a monthly basis. The graph shows the school is clearly the area of transmission. This is also true for diphtheria and rubella. Early reporting by physicians, school nurses, etc. helps stop the outbreak and control the problem much quicker. One of the problems has been the absence of adequate records. It makes a difference if the schools have records. If there are no records, it becomes a very large problem. This is especially a problem in high school records. The state has records established on about 70 percent of all school children. It is aiming for 90 percent by the end of 1979. There are about 9 to 10 percent of parents who will not respond to requests for information on immunization. We have no way of getting that information. The bill being proposed will help to provide for a record and to help get the children immunized. It doesn't make it mandatory, but it does give the parents the responsibility of making a choice. Because of the difficulties in time of making rules and then implementing them, the bill indicates that the implementing would be effective in 1979 but enforcing would not be effective until the 1980-81 school year. This would provide an opportunity for school comments, time to obtain the vaccine, time to work with the school to set up a system, and time to adequately inform the communities that this requirement will go into effect. There is evidence that this kind of law is workable in other states. There is about a 40 percent lower disease outbreak in states with laws than in states without laws. Dr. Skinner feels the cost of enforcing this bill will not be great.

Dr. Jeffrey Strickler, American Association of Pediatrics, spoke in support of Senate Bill 175 and said that the association would like very strongly to urge a do pass of the bill. He stated that previous activities trying to stimulate an adequate level of participation in immunization programs has not worked. He feels that the exemptions will take care of any objection to the bill. See Attachment "D."

Brian Zins, Montana Medical Association, stated that at the 100th annual meeting of the association the House of Delegates, which represents over 80 percent of the physicians of this state, voted to support a bill such as this.

Minutes of the Meeting
Public Health, Welfare & Safety Committee
January 29, 1979
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Ed Mares, Montana Nurses' Association, stated that this bill will take us far in the area of preventive health. On behalf of the school nurses and public health nurses, the association supports this bill. See Attachment "E." He stated that there are sufficient exemptions in the law to disallow complaints.

William Leary, Montana Hospital Association, spoke in support of Senate Bill 175 and pledged that the 60 hospitals across the state would make their facilities available, if necessary, for mass immunization.

Allene Mares, Montana Association of Local Health Officers, and representing Bob Johnson of the Lewis & Clark Cith Health Department stated that they emphatically support this bill. One of their reasons is that because if an outbreak did occur in the schools they would be called upon to assist and it is very necessary to have records. If this bill is passed, they would have the necessary records.

Alice Armstrong, Montana School Nurses' Interest Group, spoke in support of Senate Bill 175 for two reasons; one is to promote and maintain good health; and the second is to prevent diseases which can cause serious complications. See Attachment "F."

Catherine Brown, school and county nurse for Cutbank School District #15, stated that she is in support of Seante Bill 175. See Attachment "G."

Gene Dillman, Superintendent of Whitehall School Districts 4, 47 and 2, spoke in favor of Senate Bill 175. See Attachment "H."

Mrs. B. R. Edmission, Montana Federation of Women's Clubs, stated that their clubs, 3,462 women strong, cannot urge the Committee strongly enough to pass this bill.

Martha Onishuk, Montana Parent-Teachers' Association, said that they support this bill but would like it amended to add the category of mumps and would like "personal reasons" removed. She stated that the cost for this program is minimal compared to what would be required for mental and physical defects that can result from these diseases. See Attachment "I."

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T. Carl Johnson, School Administrators of Montana, stated that in their convention in October they agreed to go along with the immunization bill and asks the Committee's support.

Chad Smith, Montana School Boards' Association, stated that the school board does support the bill. At the association meeting last November a resolution was passed where we supported this concept. We are not worrying about the cost of record-keeping. What we are concerned about is that principally the enforcement of this act is tied in to a child's education. We feel that the enforcement should be tied into the parent or guardian. The Supreme Court has found that every child has a constitutional right to an education. This bill says that the governing authority shall prevent a child from attending school. Basically, we don't feel that there is much enforceability about this bill at all. The persons that will cause trouble are the ones that say they just don't feel we have a right to keep their child out of school. The suit will be against the school because it is the school offending them. On page 5 of the bill it says it will be by injunction. Mr. Smith stated that the schools are going to be in the middle of a lot of litigation. He feels that the enforcement should be directed against the parents. Also, on page 1 he has a problem with the definition of governing authority on line 16. There will be confusion as to who is running the school. It is the board of trustees in a public school. In private schools it is probably the administrator. Also, on page 3 at the bottom on lines 22 through 24 it just says whenever there is good cause to believe that a person for whom an exemption has been filed has a disease. It doesn't say who is going to make that decision. We feel that should be defined, especially since on page 6 it says that the person will be subjected to a civil penalty of \$1,000. Mr. Smith said that he would hope that this bill could be referred to a subcommittee and have these problems raked out of the bill so that it will operate in a manner whereby the enforcement is against the parents.

Harriett Meloy, Board of Public Education, stated that the board at its December meeting adopted a resolution to support a bill for immunization. See Attachment "J."

Phil Campbell, Montana Education Association, stated that the association supports Senate Bill 175 and requests that the Committee give it a do pass.

David Lackman, Montana Health Association, stated that the association voted to support an immunization bill at their annual meeting. See Attachment "K."

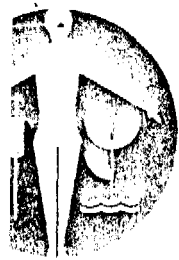
Senator Van Valkenburg closed the testimony by stating that he thinks the support and the lack of opponents indicates the broad support for an immunization bill. He stated that he feels the enforcement provision that is in the bill is a necessary enforcement provision. He feels that there is a need to have some enforcement directed at both the parents and school board to have records kept throughout the state. The language indicates that that decision would be made by a local health officer. He has no objections in meeting with a subcommittee if the committee wishes, but he does urge a do pass.

Chairman Olson asked the Committee members for any questions. Senator Himsl stated that he failed to find where there is a real penalty for the school board and asked what happens if the board doesn't want to do this. Senator Van Valkenburg stated that in section 9 on page 6 it would be interpreted by any court to provide that that is the penalty that the board would incur. The lawyer who helped draft the bill said that the primary thrust was to look at the person and not the board. Senator Himsl asked about a small board where the board objected as a group, say for religious reasons. The lawyer stated that that might create a problem. Senator Ryan wanted to know where the records would be kept and how we are going to administer from a state level if the records are kept at the school. Senator Van Valkenburg stated that on page 4, section 6, line 22, the governing authority is required to file with the state an immunization record. Senator Lensink asked Mr. Smith for a brief detailing the amendments he requested. Chairman Olson asked Mr. Smith to deliver the brief to the Committee within 24 hours.

The hearing on Senate Bill 175 was closed at 1:30 p.m.

ACTION ON SENATE BILL 186: Senator Lensink said he doesn't feel that it really conforms to the title. A discussion followed about an amendment to change the title. Senator Lensink said that the Constitution very clearly states that you have to have the title correspond to the bill. Senator Rasmussen stated that he thinks the title should be amended and asked Dennis Taylor to get some language together. Chairman Olson delayed action on Senate Bill 186 until Mr. Taylor could talk to Senator Norman about amending the title.

ACTION ON SENATE BILL 151: Senator Lensink said he had talked to Senator Watt and his desire in presenting this bill is that he just feels that after a certain length of time a person has made his contribution and should get off the board.



ATTACHMENT "C"

Department of Health and Environmental Sciences
STATE OF MONTANA HELENA, MONTANA 59601

A. C. Knight, M.D., F.C.C.P.
Director

January 29, 1979

SUMMARY OF TESTIMONY FOR SENATE BILL 175

The prevention of childhood diseases through immunization has become everyday practice for many parents and children, but not for some parents and children. There are too many Montana children who suffer one or more of these diseases, or who remain susceptible to that suffering, because they are not adequately protected. Immunization not only protects the individual child but as more and more children in a community become adequately protected, the risk of a major community outbreak of one of these diseases becomes progressively less, and the control of outbreaks, easier and easier.

In recent years, immunization levels in children have declined, especially levels of protection against poliomyelitis, diphtheria, and whooping cough. We have been able to slowly reverse that trend for Montana over the last five years for preschoolers, but still have not been able to reach many school children, especially the older-aged children where major outbreaks of measles and rubella continue to occur.

For example, in Montana's small population and in spite of an estimated 60-70 percent of the school children adequately immunized against measles, outbreaks continue to occur; once introduced into the school system, the outbreaks tend to be prolonged and extensive. In the past ten years, 3,760 cases of measles have been reported in Montana, and each year 60-80% of these cases have occurred in school-children. Of the four Montana deaths from measles during that same period, two (or one-half) occurred in school children. In 1977 alone, 80% of the cases occurred in the school-aged population, and, at one point, Montana had the highest case rate in the United States.

In addition, the school children with measles tend to be the source of measles for preschool-aged siblings and neighbors (roughly 15% of all cases) and in recent years, young adults (roughly 10% of all cases). Control of measles (transmission) among school children will not only prevent more cases among the school children, but will also prevent spread to other persons in the community.

Similar arguments can be made for Diphtheria, Poliomyelitis, and Rubella, although these diseases tend to be slightly to somewhat less contagious. An outbreak of Diphtheria with 5 cases and numerous carriers was investigated and controlled in Southeastern Montana in 1975. The last Montana polio case was recorded in 1971, but the risk of introduction is always present; the extensive

outbreak of polio in the Netherlands in 1978 extended to 2 cases in our neighboring province of Alberta, one of those cases occurring in Lethbridge. There have been several outbreaks of rubella in Montana high schools and colleges in recent years.

Why does Montana continue to have outbreaks? And why are the outbreaks often so difficult to control?

There are always several factors to be considered, such as lack of early detection of cases; with early detection and reporting, we can control outbreaks much more effectively than when many cases are already occurring. And when up to 40% or more of older school children are not completely protected, the large number of susceptible children allows outbreaks to get started. The most significant problem in disease control is lack of adequate records in the schools, and sometimes the complete absence of records. This situation is particularly prevalent in many secondary schools where there are health records but no records of immunization.

The current cooperative County-State-Federal Immunization Initiative in Montana is working to establish a record on each school child in the state (and immunize those found lacking). Recent progress reports indicate around 70% success as of December, 1978, with a goal of 90% by October, 1979. While some counties and schools have already exceeded the 90% goal, experience in several other counties has amply demonstrated that 9-10% of the parents will not and do not respond to requests for immunization information. Needless to say, once identified as susceptible, it is relatively easier to get an unimmunized child immunized.

There is no way of forcing these parents to provide that information. The current Montana law which allows school boards to adopt an immunization requirement does not provide for enforcement, and thus leaves the board vulnerable to a law suit should they attempt to enforce the requirement by, for example, excluding the child from school in the absence of an outbreak.

The current law makes immunizations compulsory, in that it allows only for medical and religious exemptions. The absence of an allowable exemption for personal reasons, in effect, makes the local board's requirement compulsory, and many boards have naturally been reluctant to adopt such a requirement. Of the 56 major school districts (each county seat), only 21, or 38%, have adopted this requirement in the five years this law has been in effect.

The current law probably applies only to school enterers, i.e., kindergarten or first grade plus transfers, and not to the other school children. We have an unofficial Attorney General's opinion to this effect; the request and response were tabled, pending the outcome of this legislation. These older children are the groups among which the outbreaks have occurred, and which also have the poorest records.

Finally, the current law, in granting or delegating the authority to the local school board, has led to a wide variance of thought and practice. There exists extensive non-uniformity of records, and considerable variability in the maintenance of these records. Once established, it does not cost much more to maintain a good record, than a sloppy record; there are a number of school districts which have exemplary records, and often these districts are not the large, wealthy districts.

One example will illustrate the value of up-to-date record systems. Sunburst, Montana, lies north of Shelby and contains an estimated 700 people. In November, 1978, an 8-year-old boy was diagnosed as having measles acquired while on a family outing to Calgary. In less than 72 hours from the doctor's report, state and local public health workers, with the cooperation of the schools, had screened the (roughly) 350 school immunization records and identified all 39 children who had no clear record of measles immunization. All 39 children were located and immunized within another 48 hours. Two subsequent cases occurred, in a school child and in a young adult; there were no further cases. Except for the index case, no child missed any school time because of the outbreak. The two additional cases had already been infected and were incubating the disease at the time of the public immunization clinic. The total cost to the state and county was less than \$500, including the vaccine. If 40% of the records had been missing, the cost in effort and in days could easily have been 5 to 10 times that amount, and end up with more than three cases.

Measles outbreaks can be very expensive. In a recent high school outbreak in Oregon, 16 out of 165 cases were hospitalized, at a total cost for hospitalization alone of \$13,835. Similarly, 40 out of 1,300 cases in an outbreak in rural Maine in 1978 were hospitalized, at a cost of \$38,225. These figures do not count the cost of (outpatient) doctor visits, medications, lost work-time by parents, lost school capitation funds (the average measles case is absent from school 5 days), or control efforts by local health departments. In the Oregon outbreak already mentioned, the county health department did nothing but measles control for two solid weeks, and so was able to prevent the disease spreading into other high schools.

The proposed law -- SB 175 -- will require an immunization record on every Montana school child in public or private schools. This record would consist of a standardized form for easy recording and easy reading of immunizations received, or a standard form for recording an exemption to immunization (on the grounds of medical, religious or personal beliefs).

The immunization is not compulsory or mandatory. The actual experience of other states with similar laws -- for example, Colorado and Missouri -- has been that less than 1-2% of children claim a personal exemption, and thus disease control is easily maintained, as well as, and at the same time as, personal freedom (and responsibility) of choice.

The proposed law provides for enforcement of the record requirement for the parent by court injunction (the parent must do something). There is a civil penalty for failure of the school to maintain the records or failure to report. The requirements for records and reporting would be established by public comment and hearings as provided by the Administrative Procedures Act, which would guarantee involvement of the school trustees and administrators in establishing the administrative requirements.

The proposed law would provide for a record review each year for each pupil in each grade, prior to the time of enrollment, not just for the school enterers and transfers. We expect that 90% of these records will have been established and at least 80-85% of the school children adequately immunized by October 1979 -- well in advance of the effective date of the requirement.

The bill provides that the rule-making authority become effective in 1979, and that the requirement for records and exemptions and the enforcement provisions become effective August 1, 1980. This delay is necessary for us to have adequate time to adopt rules following public comment, to work with the schools to establish the records where this is needed, to adequately inform the parents and the community of the requirement, and to ensure the availability of the necessary vaccines prior to the opening of the 1980-1981 school year.

Although the emphasis in these past paragraphs has been on the records and the maintenance of the records, it should be emphasized that this is a bill to provide for immunization of children for the protection of the child and of the community. While we allow for freedom of choice, the bill would mandate that the parent exercise this choice and this responsibility; the parent must have the child immunized, or claim an exemption. We still believe that the best choice is immunization, and would summarize an immunization counseling session with a parent with the advice to immunize, because for the vast majority of children, the benefits far outweigh the risks.

There is evidence from other states that such a law is practical and is effective in controlling disease. Five states have a law that requires children to be immunized against certain diseases, exempted from the requirement, or excluded from school, and have had at least one year's experience in enforcing that law: Alaska, Hawaii, Maryland, New Mexico, and South Dakota. In 1977, these five states combined had 36.3 cases of measles per 100,000 persons less than 18 years old, compared to 90.0 cases per 100,000 persons less than 18 years old in the other 45 states, and a case rate in Montana of 450.4; preliminary 1978 information indicates even greater effectiveness of such laws, with a rate of 2.8 for the five states, 42.2 for the other 45 states, and 45.0 for Montana. These rates indicate a 40.3% lower incidence in 1977 and a 93.4% lower incidence in 1978.

In summary, Senate Bill 175 provides the means to protect school children and the community against immunizable diseases. It will result in savings in medical costs, school days, public health disease control costs, and educational continuity at a very small cost -- all of which can be assumed in current levels once the system is established in 1980.

20

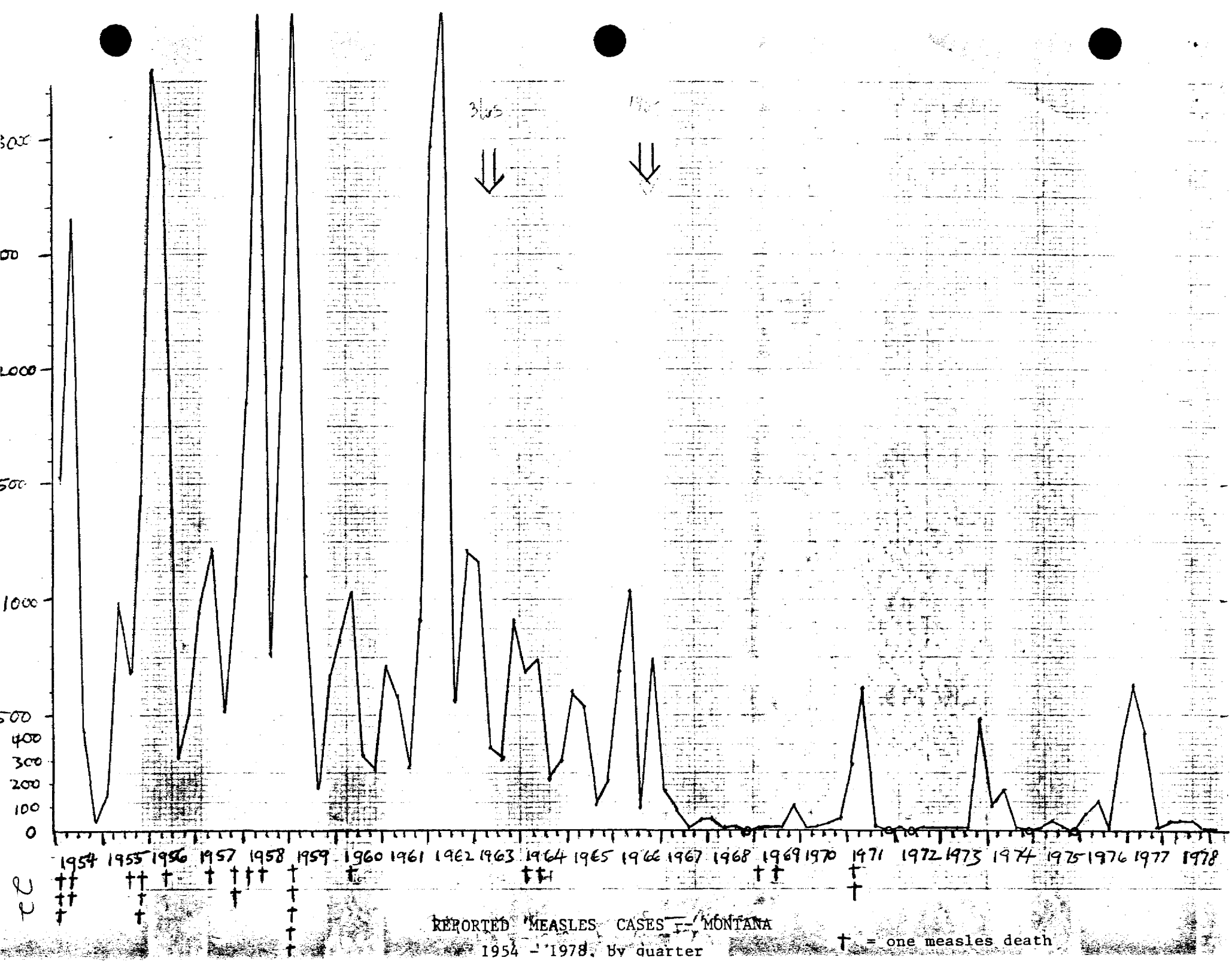
SCHOOL DISTRICTS IN COUNTY SEATS
WHICH HAVE ADOPTED AN IMMUNIZATION REQUIREMENT

JANUARY 1, 1979

Alphabetically by County

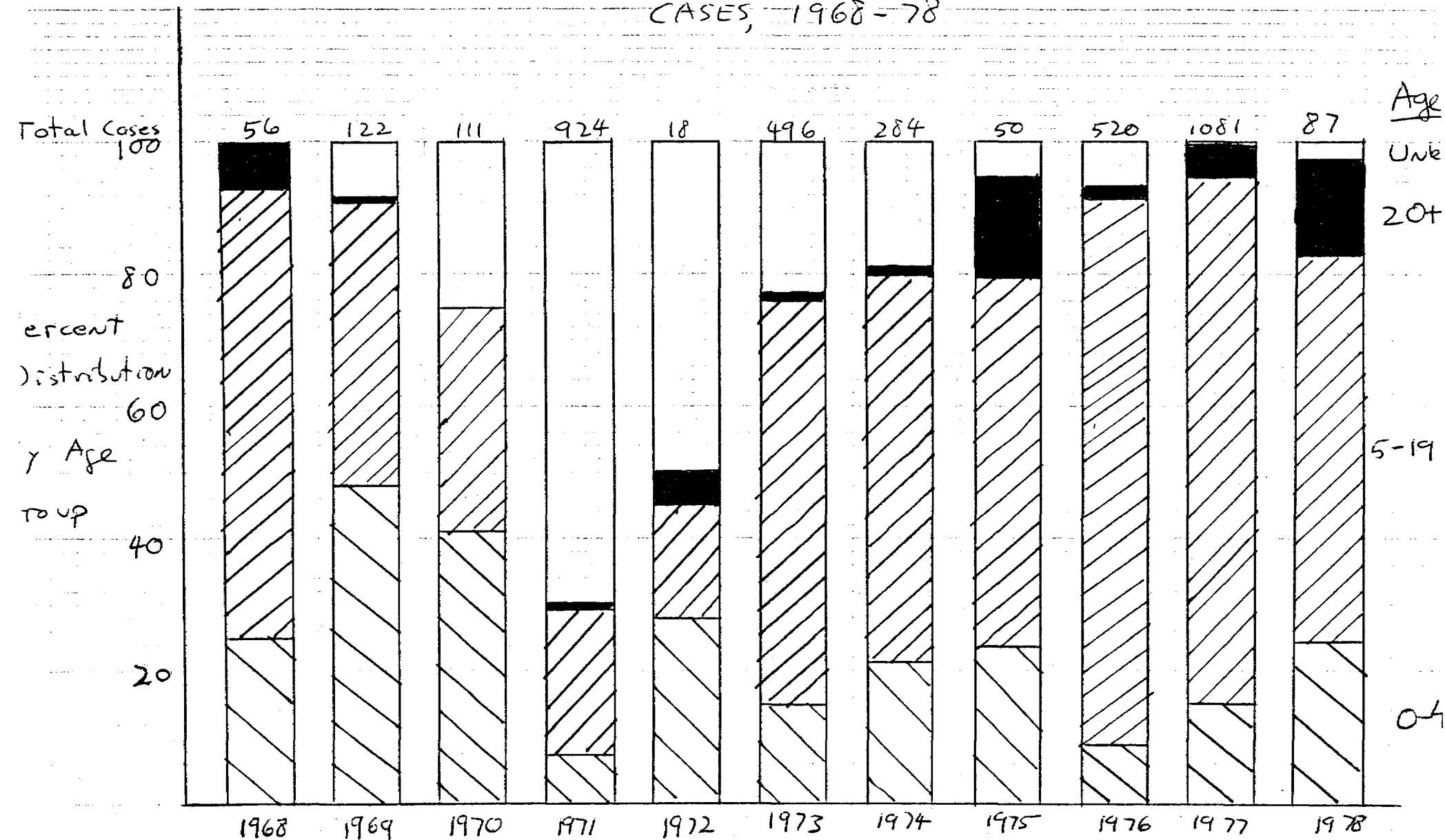
<u>County</u>	<u>County Seat</u>
Big Horn	Hardin
Cascade	Great Falls
Custer	Miles City
Dawson	Glendive
Flathead	Kalispell
Glacier	Cut Bank
Granite	Philipsburg
Hill	Havre
Lake	Polson
Lewis & Clark	Helena
Liberty	Chester
Lincoln	Libby
Mineral	Superior
Missoula	Missoula
Musselshell	Roundup
Phillips	Malta
Powell	Deer Lodge
Ravalli	Hamilton
Rosebud	Forsyth
Sanders	Thompson Falls
Teton	Choteau

In addition, Conrad (Chouteau County) and Glasgow (Valley County) have an administrative policy of strongly urging students to be immunized.



MEASLES, MONTANA

AGE DISTRIBUTION OF REPORTED CASES, 1968-78



Preventive Health Services Bureau, January, 1979

AGENCIES/ORGANIZATIONS/ASSOCIATIONS ENCORSING
STATEWIDE IMMUNIZATION LEGISLATION (SB 175)

Family Planning Advisory Council	Montana Medical Association
Health Officer & Nursing Director, Missoula County	Montana Nurses Association
Human Resources Council, District #11	Montana School Boards Association
March of Dimes	Rocky Mountain Development Council
Montana Association of School Administrators	School Nurse Interest Group
Montana Democratic Women's Clubs	Montana Association of Health, Physical Education & Recreation (MAHPER)
Montana Federation of Women's Clubs	Montana League for Nursing
Montana Health Association	Montana Board of Public Education
Montana Hospital Association	Academy of Pediatrics
	Local Health Officers Association

Copies of individual endorsement letters/resolutions will be provided
upon request.

Helena Medical Clinic, P.S.C.

1930 9TH AVE.
HELENA, MONTANA 59601
TELEPHONE 442-9523

January 26, 1979

DAN SMELKO
Business Manager

INTERNAL MEDICINE:
J. B. SPAULDING, M.D.
D. R. HIESTERMAN, M.D.

OBSTETRICS AND
GYNECOLOGY:
J. J. DRYNAN, M.D.
J. E. NICKEL, M.D.
F. C. COOPER, M.D.

PEDIATRICS:
B. C. RICHARDS, M.D.
J. H. STRICKLER, M.D.

SURGERY:
W. J. HOOPES, M.D.
K. J. WRIGHT, M.D.

MEMO TO: Senate Committee on Public Health

RE: SB-175

FROM: Jeffrey H. Strickler, M.D., representing the Montana
Chapter of the American Academy of Pediatrics

The Montana Chapter of the American Academy of Pediatrics would like to inform you of their enthusiastic support of the Montana School Immunization Law and strongly urge passage in its present form.

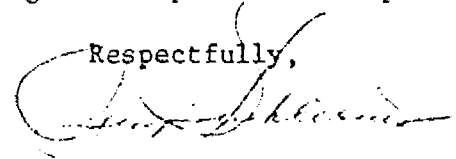
The diseases covered: diphtheria, polio, whooping cough, measles and tetanus have been responsible in the past for a significant mortality among the children of Montana. Rubella, as is well known, has been responsible for multiple birth defects. With the exception of tetanus, which is ubiquitous in our environment, these are all highly contagious diseases and, most significantly, amenable to safe, inexpensive and highly effective immunizations.

Even with enthusiastic education programs through public health, private physicians and the schools, we have achieved only a 60% immunization record in Montana. This level is not sufficient to prevent epidemics as is well documented by the measles outbreak last year.

Since the schools are the major place where children congregate and the focus of most epidemics of childhood illness, it is most appropriate that the schools be the focus of the immunization law.

In conclusion, the American Academy of Pediatrics representing the pediatricians of Montana, strongly urges mandatory immunizations prior to entering school with a clause providing medical, religious or personal exemptions.

Respectfully,



JEFFREY H. STRICKLER, M. D.

JHS:jz1



Montana Nurses' Association

1716 NINTH AVENUE

(406) 442-6710

P.O. BOX 5718 • HELENA, MONTANA 59601

SB 175: Mandatory Immunization for School-aged Children

Testimony by: Edward Mares, Executive Director, MNA

On behalf of the 1300 members of the Montana Nurses' Association and especially school nurses and public health nurses across Montana, I offer my full endorsement for Senate Bill 175.

Immunization of school-aged children is an important preventive health measure which will guarantee the control of various communicable diseases in Montana. This legislative proposal will greatly assist the national goals of the "Immunization Initiative" and insures that our children have been vaccinated against these serious diseases.

The state Department of Health has cooperated with local health departments in insuring that rural immunization clinics are publicized and successful. SB 175 will not involve additional costs typically associated with implementing a mandated program because the immunization serums are available through the State Health Department.

The Montana Nurses' Association believes that SB 175 includes more than sufficient exemptions whereby parents may opt to not have their children immunized. The important and most valuable aspect of this legislation is that immunization records for school children will finally be available statewide. When there is an outbreak of a disease, public health officials, school nurses, etc. through the record-keeping will at least know, which children have not been immunized.

SB 175 is greatly needed for Montana. Registered nurses will assist in implementing this legislation and MNA urges a do-pass recommendation.

ATTACHMENT "F"

January 29, 1979

Alice L. Armstrong,
Vice Chairman
Montana School Nurse Interest Group

I support Senate Bill #175 for the following reasons:

1. To Promote and Maintain good health in children.
2. To Prevent disease which can cause serious complications in some children.

The Montana School Nurse Interest Group supports this bill since it pertains to the health and well being of children. As a member of that group I am in full support of Senate Bill #175.

ATTACHMENT "G"

I am Catherine Brown, School & County Nurse, Cut Bank School District #15. I am representing Mr. William Cooper, Superintendent of Schools who is unable to be here. I have worked for the County and School District #15 for twenty three years.

The school district adopted the immunization requirement that children entering school should be immunized against DPT, Polio, Rubeola and Rubella. We have never attempted to enforce this law beyond constant reminders and a few "gentle" threats. Our problem is that after we get them in for a beginning immunization we have to constantly remind the parents to return, or they never go back. It is all due to general apathy on the part of parents and it is not a great priority for them.

Last Spring we had a big drive to bring all children up to top levels of immunization. In the letter to parents, we offered financial help, also for any parents who had Religious, Medical or other reasons to contact the Superintendent and let us know about their particular difficulty.

We had one request for financial help and two medical exemptions and one parent with Religious reasons. The medical exemptions were only asked for Rubella. We brought our level of immunization up at least 20% and also completed many immunizations that had been neglected. We used the local law with threat of suspension. We still have a few in our elementary grades that are not immunized completely. We have not had a drive in the high school except for measles.

It's a disgrace that the children are not immunized as infants as all these preventable diseases have the potential of denying children the chance to even attend school. *Due to the effects of the disease*

Records have been a real problem all over the state. Some uniform type of recording and someone responsible in each district to see that it is done must be implemented. The transfer of this record must also be assured.

It is good to have a local law but we were never sure whether we wanted to test it - we used it as a "stick". A State law would give us help to enforce our local requirements.

ATTACHMENT "H"

HEARING ON IMMUNIZATION BILL
CAPITOL BUILDING

Room 410

1:00 P.M.

Gene Dillman, Superintendent

Whitehall School Districts
4, 47 & 2

The Whitehall School Board adopted a policy, in November of 1977, that directed each child (K-12) to meet these minimal immunization requirements:

Four DPT's and three polio (at least one of each given after age 3);

One rubella;

One rubeola.

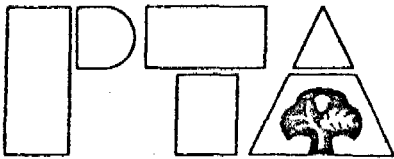
Requirements were to be met by September 6, 1978, or students would not be permitted to attend school until accomplished.

In preparation for carrying out the above policy, the school nurse, with several helpers, went through all health records prior to May of 1978 to determine those students in need of immunizations.

Two free clinics were held prior to the end of the school year in June of 1978 for the purpose of updating immunizations.

Parents cooperated, generally, with a few exceptions, and a week after the opening of school in September there were about thirty students out of a total enrollment of 750 who were not completely immunized, most of which were new students. By January 10, 1979, all student immunizations were complete.

The greatest problem encountered was getting parents to make immunizations records available to school personnel for checking. The only other problem, which involved only a few parents, was resistance to the Board policy.



MONTANA CONGRESS OF PARENTS AND TEACHERS

5855 Pinewood La.
Missoula, Mt. 59801
January 28, 1979

Senate Health Committee
Capitol Building
Helena, Mt. 59601

Dear Senators:

The Montana Congress of Parents and Teachers supports S.B. 175 requiring mandatory immunization of all school children in Montana.

Because all children are required to attend school, they must be protected from communicable diseases they may be exposed to at school. The only way this can be done is to require immunization before entering school, as is required in 44 states.

We support the requirement in this bill for immunizations for diptheria, pertussis, tetanus, polio, rubella and rubeola. We support the exemptions on religious and medical grounds at parental request.

We ask that mumps be included as a disease to be immunized against. Permanent deafness that neither hearing aids nor surgery can help can result from mumps. Because this tragedy can be prevented by immunization, we request it be included in this bill.

The 1978 MPTA Convention adopted a resolution allowing only religious and medical reasons for exemptions. We would request you to consider removing "personal" from this bill, closing a loop-hole which could reduce the number of children immunized and, therefore, the effectiveness of the program.

Prevention of diseases that can cause physical or mental damage to children--and all of these diseases do--can be defended on the monetary grounds of reducing the number of children who will have to be educated in special education classes that are much more expensive than regular classes.

But, more importantly, one child spared the heartache of mental or physical damage caused by a disease which could have been prevented by immunization is reason enough to pass this bill.

Sincerely,

Martha L. Onishuk
MPTA Legislative Co-ordinator

Board of Public Education

BOARD MEMBERS

EX OFFICIO MEMBERS:

Thomas L. Judge, Governor
Georgia Rice, Superintendent of
Public Instruction and Executive
Officer of Vocational Education
Lawrence K. Feltz, Commissioner
of Higher Education

APPOINTED MEMBERS:

Earl J. Barlow, Chairman
Browning
Neil J. Lynch
Butte
Allen D. Gunderson
Billings
George A. Johnson
Great Falls
Marjorie W. King
Winnett
Harriet C. Meloy, Vice Chairwoman
Helena
Enid O'Leary
Havre

RICHARD L. (RICK) REESE
MARILYN F. MILLER
ASSISTANTS TO THE BOARD

January 29, 1979

TESTIMONY

HB 175 - PUPIL IMMUNIZATION

given by

Harriett Meloy, Chairperson
Board of Public Education

At its meeting of December 12, 1978, the Board of Public Education unanimously adopted a resolution favoring state legislation requiring the immunization of school children.

The resolution is attached and reads as follows (see attached resolution):

House Bill 175 addresses the Board's concern about this crucial matter and the Board of Public Education urges your support of the bill.

Board of Public Education

BOARD MEMBERS

December 12, 1978

RICHARD L. (RICK) REES
MARILYN F. MILLER
ASSISTANTS TO THE BOARD

EX OFFICIO MEMBERS:

Thomas L. Judge, Governor
Georgia Rice, Superintendent of
Public Instruction and Executive
Officer of Vocational Education
Lawrence K. Pettit, Commissioner
of Higher Education

APPOINTED MEMBERS:

Carl J. Barlow, Chairman
Downing
Neil J. Lynch
Butte
Allen D. Gunderson
Bozeman
George A. Johnson
Great Falls
Marjorie W. King
Helena
Harriett C. Meloy, Vice Chairwoman
Helena
Fred O'Leary
Bozeman

RESOLUTION

WHEREAS, an estimated 80,000 children in Montana under age 15 are inadequately protected against one or more of the seven childhood diseases preventable by immunization; and

WHEREAS, Montana had the highest case rate in the nation for measles in 1977; and

WHEREAS, the case rate of measles has been approximately twice as high in those states without statewide immunization requirements for school entry as in the states with such requirements; and

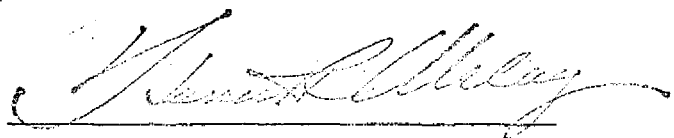
WHEREAS, Montana is one of only six states and territories which does not have statewide immunization laws or regulations for all school children; and

WHEREAS, the current law allowing local school districts to require immunizations has been frequently not adopted and, where adopted, generally unenforced and ineffective; and

WHEREAS, cases and even outbreaks of immunizable childhood diseases continue to occur unnecessarily in Montana;

THEREFORE, BE IT RESOLVED that the Board of Public Education does hereby support and urge the passage of legislation (at the next legislative session) which will create a statewide immunization requirement for all school children in Montana; and

BE IT FURTHER RESOLVED that such a law allow for enforcement by exclusion, and allow for exemption for medical, religious, and personal reasons when recorded in writing.



HARRIETT C. MELOY
VICE CHAIRWOMAN

I am David Lackman , Diplomate in Immunology of the American Board of Microbiology ; and lobbyist for the Montana Health Association . I am testifying in support of Senate Bill 175. When the Board of Health was created on March 15, 1901 , one of three pressing problems was smallpox. Vaccination was responsible for relegating this disease to history in Montana. When prisoners of war from the North African Campaign arrived in my camp (Camp Hood) , they brought virulent diphtheria with them. It spread to children in the civilian village and there were fatalities. Since then we have been continually faced with the threat of diphtheria and it has appeared in Montana in recent years. Childhood vaccination is important in eliminating this disease. Untoward reactions may occur when this vaccine is administered to adults. Among my worst recollections is that of poliomyelitis epidemics in the thirties. Such epidemics have disappeared because of the development of an effective vaccine. Nonetheless , results of tests to determine the level of immunity to polio in Montana revealed that only 30 percent of the population was immune to all three types. Therefore , the threat of a return of epidemics exists unless we can vaccinate as vigorously as when the product first came out.

Measles and German measles are other disease against which an effective vaccine has been developed recently. Yet we still have epidemics of these diseases. Measles sometimes causes serious complications resulting in death or permanent disability. Accumulating evidence suggests that virulent virus is one of those viruses which can trigger the onset of multiple sclerosis. German measles , contracted during pregnancy , causes a variety of birth defects.

My experience , and that of others in immunology , has shown that coercion and subsidization is necessary for success in some preventive medicine programs. This is unfortunate - but it is a fact of life . We urge a DO PASS recommendation for this bill.

STATEMENT ON SENATE BILL NO. 175
BEFORE THE SENATE PUBLIC HEALTH COMMITTEE

I appear on behalf of the Montana School Boards Association in support of Senate Bill No. 175 and wish to inform the committee that the Association adopted a resolution at its annual meeting on November 1, 1978 in support of the general concept of immunization of all school children against the more common communicable diseases. However, at the time the resolution was passed, there was no opportunity to examine Senate Bill No. 175 so the means of implementing the concept was not available for examination.

We do, however, have some serious concerns about the manner of enforcement of mandatory immunization and do not feel that it is proper to place the burden of enforcement upon the school districts. We must remember that the primary obligation of school districts is education and that it is the prime responsibility of the Department of Health and other health officials to enforce public health matters. Section 7, subsection 1 of the bill found on page 4 beginning at line 15 provides that the governing authority of any school shall prohibit from further attendance any pupil enrolled who has failed to obtain the immunizations required. In other words, it becomes the duty of the school district to prohibit attendance by the pupil by reason of his parents' or guardian's failure to comply with the law. Any legal action by a parent or student would therefore be against the school district because it is the school that would have offended the individuals by failure to admit the student.

The courts have ruled that every child has a constitutional right to education and therefore it is obvious that any statute that would interfere with that constitutional right would be struck down. See Butler Area School District -v- Butler Education Association, 391 A.2d 1295 (1978).

It is ironic to note that the only person or persons who would bring such an action would be individuals who are trying to test the act, because of the fact that enforcement of the proposed law is so loose as to be really meaningless. All an individual has to do to avoid compliance is to present a written statement indicating that immunization is contrary to the personal beliefs of that individual and he is thereupon exempted from compliance. Any reasonable person not desiring to comply would readily sign such a statement. We are confident that because of the many test cases brought against school districts in Montana during the past two years that some individual, association or governmental agency will most certainly challenge the constitutionality of this proposed law the first time an attempt is made to enforce it. We feel that the following deletions should be made from the bill so that the enforcement will be exercised against the parents or guardians of the child who refuse to comply. This can be accomplished by deleting the following portions of the bill:

Section 2 on page 2, lines 4 through 13;

Section 3 on page 2, lines 14 through 20;

Section 4, subsection 3 on page 3, line 22 through
page 4, line 6 and

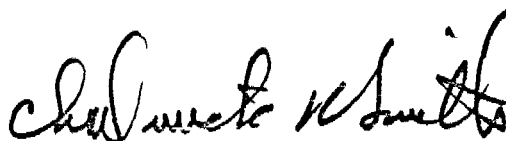
Section 8, subsection 2 on page 5, lines 16 through 23.

With the above deletions, enforcement would be provided by the remaining subsections of Section 8 on page 5 and would subject offenders to the civil penalty provided in Section 9 on page 6.

The school districts do not object to assisting in the keeping of records as provided in Section 5 on page 4 and do not feel that the cost of such participation would be substantial.

Furthermore, the definition of "governing authority" in Section 1, page 1, lines 16 through 19 should be amended to indicate that the governing authority is the Board of Trustees of a public school and the administrator of a private school.

Respectfully submitted,



CHADWICK H. SMITH, on behalf of
Montana School Boards Association
26 W. 6th Avenue - P. O. Box 604
Helena, Montana 59601
Lobbyist No. 52-79

MONTANA
SCHOOL IMMUNIZATION LAW
FACT SHEET

BACKGROUND

During the past several years, Montana schools have experienced serious measles and rubella (German measles) outbreaks. The potential threat of measles and rubella outbreaks, as well as those of other preventable diseases such as diphtheria, polio, and pertussis (whooping cough) exists in any school population where there are unimmunized children. In 1977, more than 1,100 measles cases were reported in Montana, and almost 80 percent of those cases occurred in school children. Health officials estimate that in 1977 approximately 40 percent of Montana's children under the age of 15 were not adequately immunized against seven preventable childhood diseases -- measles, mumps, rubella (German measles), pertussis (whooping cough), polio and tetanus.

When attempting to control measles and similar outbreaks in schools, health and school officials often are frustrated by the inadequacy of school immunization records. Without adequate records it is extremely difficult to determine which children have been immunized, and the identification of susceptible children is critical to controlling any disease outbreak.

Several medical, health and school organizations have endorsed this legislation, including the Montana Medical Association, the Montana Nurses Association, School Nurse Interest Group, Montana Hospital Association, Montana School Boards Association, Montana Association of School Administrators, and Montana Board of Public Education.

INTENT

The intent of the legislation is two-fold: 1) to insure, as much as is possible, the adequate immunization of all school children in Montana; and 2) to provide for a school immunization record, so that health and school officials can quickly identify, in the event of an outbreak, those children who are not immunized, (for example, because of an approved exemption).

IMMUNIZATION REQUIRED

The legislation provides that a child should not be enrolled in any grade of school unless he or she has been immunized against diphtheria, pertussis, tetanus, polio, rubella and measles. Provision is made for conditional enrollment and for exemptions from the requirement.

SCHOOL IMMUNIZATION LAW

IMMUNIZATION RECORD

Provisions of the legislation require that each school establish an immunization record for every child enrolled, and that the school obtain in writing evidence of each pupil's immunizations. The immunization record must be a permanent part of the child's school record. The Montana Department of Health and Environmental Sciences shall prescribe the form on which this information is recorded.

CONDITIONAL ENROLLMENT

A child may be enrolled in school even though he has not been fully immunized against each of the diseases listed, on the condition that he has received one or more doses of the required vaccines, (except that a dose of pertussis vaccine is not required for a person seven years of age or older). The child must complete the required series of immunizations within a specified time period to continue to attend school.

EXEMPTION

The legislation provides for medical, religious or personal exemptions. If the parent intends to claim a personal or religious exemption, the parent must file with the appropriate school authority a written statement that immunization is contrary to the personal or religious beliefs of the signer. This statement shall be maintained in the child's permanent school file.

A medical exemption requires the filing of a statement signed by a physician stating that the physical condition of the child indicates that some or all of the required immunizations are not considered safe, with reason(s) stipulated. This statement shall be kept as part of the permanent record.

ENFORCEMENT

The governing authority of the school shall enforce the provisions of this legislation, including refusing to enroll children who are not immunized or for who no exemption is filed, and excluding those children who have not fulfilled the conditional enrollment requirements. Whenever there is good cause to believe that a person for whom an exemption has been filed has one of the diseases listed or exposed to one of these diseases, the person may be excluded from the school by the local health officer or the Montana Department of Health and Environmental Sciences until the authority is satisfied that the person is no longer at risk from that disease. The exclusion period will not exceed 30 days.

CIVIL PENALTY

The legislation provides for a civil penalty not to exceed \$1,000 for persons who violate this law.

THE MARCH OF DIMES

PREVENTS BIRTH DEFECTS

P.O. BOX 2221 • GREAT FALLS, MONTANA 59403 • 452-3307

Supports the Salk Institute



January 26, 1979

Dr. S. A. Olson
Senate Public Health Committee
Montana State Legislature
Helena, Montana 59601

Dear Doctor Olson:

This is in reference to Bill No. 175 regarding a Statewide School Immunization Law.

Because The National Foundation-March of Dimes' primary mission is the prevention of birth defects, The National Foundation-March of Dimes supports rubella immunizations.

During the last major rubella epidemic, approximately 50,000 American children died before birth because their mothers contracted rubella while pregnant. Because children aged one to twelve are the main sources of rubella infection, it is imperative that these children be vaccinated if the rubella virus is to be eliminated.

Thank you for giving us the opportunity to offer written testimony.

Sincerely yours,

Dr. Roger Lewis

Dr. Roger Lewis
March of Dimes Immunization Spokesman

GB:lr
cc: Felix A. Montes

5B175

LIBBY PUBLIC SCHOOLS

111 EAST LINCOLN BLVD.
LIBBY, MONTANA 59923

406-293-6204

January 24, 1979

Dr. Stuart Olson, Senator
Chairman of Public Health Committee
State Capitol Building
Helena, Montana 59601

Dear Dr. Olson:

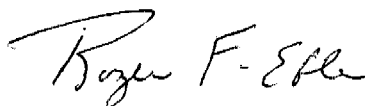
I understand that testimony will be heard on Monday, January 29, 1979, concerning an Immunization Bill for the State of Montana. I do not know if your committee will accept written testimony; however, in that I cannot be there personally, I would like to offer this letter as testimony if it is permissible.

My position is one of strong support for the proposed legislation. During the summer of 1978, our Board of Trustees passed a board policy that closely resembles the proposed legislation. The policy was to go into effect for the 1978-79 school year. We have been operating under this policy for the first semester of this school year and have found it to be very successful. Our immunization percentage went from somewhere between 50-60% to over 90%. To be sure, there were some complaints; but the vast majority of people thought that it was something that should have been done sooner. The implementation of the program caused some extra work for our two school nurses and the building administrators, but all of them unanimously agreed that it was worthwhile.

I want the committee to know that it is not a cumbersome program to administer and I, personally, cannot see any problem for any district in the State to administer such a program--especially since the program is mandated by State Law.

Thank you for the consideration of this testimony.

Sincerely,



ROGER F. EBLE
Superintendent

RFE:jh

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CHILD ADVOCACY OF HELENA
January 27, 1979

To: Senator Olson, Chairman, and members of the Public
Health Committee

Re: S.B. 175

Dear Legislators:

We would like to encourage your support and approval of S.B. 175 as a safeguard to the health of all Montanans. We feel that there are sufficient provisions for allowance of individual convictions and personal beliefs as the bill is written. Montana is one of only four states that have not enacted such legislation for the protection of its citizens.

Thank you for your support.

Respectively,

Rita Blouke
Child Advocacy of Helena
Rita Blouke
Pat Wall
Dr. Robert Kechely
Dr. Robert Bateen
Dr. Dick Swenson
Agnes Johnson
Billie Jean Hill
Kathy Zednick
Maureen Redfield
Julie Groepper
Mary Mouat

NAME: Mrs B. P. Edinsson DATE: _____

ADDRESS: 620 1st SE City Bank Bldg 59427

PHONE: 873-2489

REPRESENTING WHOM? Montana Federation of Women's Clubs

APPEARING ON WHICH PROPOSAL: Immigration Bill 175

DO YOU: SUPPORT? ☒ AMEND? _____ OPPOSE? _____

COMMENTS: Our women 3,462 strong - can

not urge you strongly enough to pass this

Bill - Our present laws in Montana certainly

do not qualify to protect our children -

Our group will help in any way to

Carry out the Bill 175

See

NAME: Martha Onishuk DATE: 1/29/79

ADDRESS: 5855 Pinewood Ln - Missoula

PHONE: 549-0918

REPRESENTING WHOM? Montana P.T.A.

APPEARING ON WHICH PROPOSAL: S.B. 175

DO YOU: SUPPORT? X AMEND? X OPPOSE?

COMMENTS: MPTA Supports mandatory immunization

would like mumps included -

would like "personal reasons" removed -

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: T Carl Johnson DATE: 1-29-78

ADDRESS: Helena

PHONE: 442-2510

REPRESENTING WHOM? School Administrators of Montana

APPEARING ON WHICH PROPOSAL: SB 175

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: Association by resolution
supports immigration of children.
~~They~~ The Association asks that the
Committee act favorably on this important
issue.

NAME: David Lackman DATE: 1/29/79

ADDRESS: 1400 Winne Hlne

PHONE: 443-3494

REPRESENTING WHOM? MT Health Assn.

APPEARING ON WHICH PROPOSAL: SB 175

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS: Montana Health Assn. voted

unanimously to support this
legislation.

NAME: Frank Davis DATE: 1/29/79

ADDRESS: 613 Beth Dr Green Falls

PHONE: 453-6622

REPRESENTING WHOM? Mont. State Pharmaceutical Assoc.

APPEARING ON WHICH PROPOSAL: SB 175

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: 100% support from pharmacy

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

ROLL CALL
PUBLIC HEALTH COMMITTEE

46th LEGISLATIVE SESSION - - 1979

Date 1-29-79

NAME	PRESENT	ABSENT	EXCUSED
Olson, S. A., Chairman	✓		
Rasmussen, A. T., V. Chr.		✓	
Hims1, Matt V.	✓		
Lensink, Everett R.	✓		
Norman, Bill	✓		
Palmer, Bob			✓ until 1:00
Ryan, Patrick L.		✓	

Each day attach to minutes.

MINUTES OF THE MEETING

PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE

January 31, 1979

The ninth meeting of the Public Health, Welfare and Safety Committee met on January 31, 1979, in Room 410 of the State Capitol Building at 12:30 p.m.

ROLL CALL: All Committee members were present except Senator Rasmussen, Senator Lensink, and Senator Ryan. They arrived later in the meeting.

Chairman Olson introduced Walter Marshall and asked him to speak to the Committee about the Governor's Advisory Council on Aging. Mr. Marshall stated that there are about 22 members on the advisory council. There are seven areas in the state of Montana, and the council is composed of 2 to 3 people from each area. The council meets on a quarterly basis. He stated that aging services in the state of Montana is running between four and five million dollars per year. He said that each year there are more and more technical problems coming within the scope of legislation. The House has appointed a committee of six to study these problems. The aging services would like a select committee from the Senate of three to four members so that the aging services bills coming in will have members who are aware of the problems. Chairman Olson asked Committee members if they had any questions. The question was brought up as to whether this Committee would function year round. Mr. Walter said that was the intent. Senator Palmer said this is the intent of the House subcommittee, so that in the next two years they will be ready with a package of bills at the next session. Mr. Walter said that the committee would meet with the council three times a year in Helena and once a year some place else in the state, and the aging services would have money to reimburse mileage.

CONSIDERATION OF HOUSE BILL 59: House Bill 59 is an act to provide for a public member on the board of optometrists and to change the terms of board members from 6 years to 4 years.

Representative Paul Kropp from District 5 in Malta sponsored House Bill 59 at the request of the Department of Professional and Occupational Licensing. Representative Kropp stated that if this bill passes there would be four members appointed by the Governor -- three to be registered optometrists and one would be a representative of the public. They would serve for a term of four years.

problems with the abortion clinics. It was pointed out that any hospital would give the medication if ordered by a physician and worry about being paid later. Senator Norman stated that he doubts if the abortion clinics even know if the woman is RH+ or RH-. Senator Lensink made a motion for a DO NOT PASS on Senate Bill 159. The motion was seconded, and a roll call vote was taken. The motion passed with a vote of five to two.

ACTION TAKEN ON SENATE BILL 186: Senator Norman made a motion for a DO PASS on Senate Bill 186. There was a question brought out about the title being confusing as to what the bill does. Dennis Taylor, Legislative Council, presented two amendments for the Committee's consideration to help solve this problem. Senator Norman withdrew his motion. It was pointed out that it might be more confusing to amend the title. Senator Lensink stated that he would rather not amend. Senator Himsel stated that he is concerned about the use of the words "certain types." Senator Norman stated that he would approve of taking out these words. After more discussion, it was felt that the title should remain as is. Senator Norman made a motion for a DO PASS on Senate Bill 186. The motion was seconded and passed unanimously.

ACTION ON SENATE BILL 175: Senator Palmer stated that Senator Van Valkenburg, sponsor of Senate Bill 175, does object to the amendments requested by Chad Smith and would like to be present if the Committee plans to amend the bill. Senator Rasmussen feels that the amendments have some merit. After some discussion, the Committee decided that they would like to consider some amendments to the bill in the area of enforcement and the designation of governing authority. Chairman Olson said that action on Senate Bill 175 would be postponed until Senator Van Valkenburg could be present.

ACTION ON HOUSE BILL 22: Chairman Olson read a memo from Ed Carney setting the record straight on the fees charged by the Board of Massage Therpists. After discussion on the need for an increase in fees, Senator Rasmussen made a motion that House Bill 22 BE CONCURRED IN. The motion was seconded and carried unanimously.

ANNOUNCEMENTS: Chairman Olson announced that Senate Bill 97 was posted for hearing on February 16 and would be held in Room 104.

ROLL CALL
PUBLIC HEALTH COMMITTEE

46th LEGISLATIVE SESSION - - 1979

Date 1-31-79

[illegible]

Each day attach to minutes.

MINUTES OF THE MEETING

PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

February 5, 1979

The eleventh meeting of the Public Health, Welfare and Safety Committee met in Room 410 of the State Capitol at 1:00 p.m.

ROLL CALL: All members were present except Senator Rasmussen.

CONSIDERATION OF SENATE BILL 109: Senate Bill 109 is an act to clarify the relationship between the Department of Health and Environmental Sciences and local boards of health with respect to the validation by local health officers of certain licenses issued by the Department of Health and Environmental Sciences and to limit certain supervisory functions of the department. It was heard in Committee on January 24, 1979.

The Committee members received a revised copy of suggested amendments to Senate Bill 109 (see Attachment "A"). Dennis Taylor, Legislative Council, explained the amendments on Attachment "A" and the amendments on the original sheet of proposed amendments (see Attachment "B"). Senator Himsl asked about the sanitarian and local health officer requirement. Chairman Olson explained that every county is under the jurisdiction of a sanitarian although some counties do share one sanitarian, but not every county has a health officer. Senator Himsl moved that the amendments numbered 2, 4, and 6 on Attachment "A" be adopted. The motion was seconded and carried unanimously.

Mr. Taylor stated that amendment number 7 on Attachment "A" is patterned off an existing law for environmental waste. It provides due process of law. Senator Norman asked if the local health officer is unable or won't act where the individual goes next. Mr. Taylor said that they appeal to district court. Doug Olson stated that this puts a 15-day limitation on an answer. Chairman Olson questioned the problem of mail service. Mr. Olson stated that it is much more difficult to revoke a license once issued. If it is not issued, it gives the party a way to appeal. Senator Ryan moved adoption of amendment number 7 on Attachment "A." The motion passed unanimously.

The Committee went on to amendment number 8 on Attachment "A". Chairman Olson asked if each county has a local board of health. Doug Olson stated that the county commissioners plus some other individuals means local board of health unless a board is otherwise defined. The Committee referred to the Code which defines the county board of health as consisting of county commissioners or five persons appointed by the county commissioners.

Senator Ryan feels that the last line of the amendment is too broad. Discussion followed on this. Senator Hims1 moved that amendment number 8 on Attachment "A" be amended to delete the words ", and any other interested person" following "department." The motion passed unanimously. Senator Ryan moved that amendment number 8 as amended be adopted. The motion carried unanimously.

Senator Lensink moved that we adopt amendments number 6 and 7 on Attachment "B." The motion carried unanimously.

Mr. Taylor explained that amendment number 8 on Attachment "B" is for codification purposes. Senator Palmer moved that amendment number 8 on Attachment "B" be adopted. The motion was seconded and passed unanimously.

ACTION ON SENATE BILL 109: Senator Ryan moved that Senate Bill 109 as amended do pass. A roll call vote was taken, and the motion passed unanimously.

CONSIDERATION OF SENATE BILL 175: Senate Bill 175 is an act to provide for immunization of pupils in public and private schools. It was heard in Committee on January 29, 1979.

Chad Smith, Montana School Boards Association, distributed copies of some amendments (see Attachment "C") that he is proposing to the originally proposed amendments (see Attachment "D"). Mr. Smith stated that they are supportive of Senate Bill 175 but are concerned about the enforcement. Under the proposed amendments the governing authority would still be responsible for keeping the records. Senator Van Valkenburg, sponsor of Senate Bill 175, stated that the reason that the definition is there for governing authority is to provide some clear definition of who has the authority to take the actions in the rest of the bill. The attorney from the Department of Health stated that the intent of the bill was to hold the individuals who violate the law responsible, and not the school district as a whole. Senator Hims1 stated that he understands the school board sets the policy, and the hired agent simply enforces the policy. As an individual board member you have no position at all. Senator Lensink stated that he feels amendments 1 and 2 on Attachment "C" are necessary. the board of trustees is the responsible party. Senator Ryan stated that he feels principals and administrators are simply acting on behalf of their board. The responsibility still lies with the board of trustees. Senator Van Valkenburg said with the amendments it is going to take each board of trustees through the state to take action on this. He feels we could take care of this here. Senator Lensink stated that principals do expell students; but, if there is an appeal,

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it goes to the board who is the ultimate authority. Senator Lensink moved that we adopt amendment number 1 on Attachment "C." Motion carried unanimously. Senator Lensink moved that the Committee adopt amendment number 2 on Attachment "C." The motion was seconded and carried unanimously.

Mr. Smith explained that amendment number 3 of Attachment "C" relates to who is to enforce the public health laws and rules of the state; whether it is the educational facility or the boards. With this amendment the school will keep the records and the health officer can look at the records and enforce the law. Senator Van Valkenburg stated that if the Committee adopts the next two amendments (numbered 3 and 4 on Attachment "C") it might as well kill the bill. He distributed a memorandum establishing constitutionality of Senate Bill 175 (see Attachment "E"). He stated that he feels the law has been pretty well established. Senator Ryan stated that he agrees with Senator Van Valkenburg in this respect. Part of this bill is tracking these children from place to place, and he feels that the tracking process is just as important as the immunization. Senator Lensink asked what happens if a parent defies and says he won't respond. Senator Van Valkenburg stated that on page 5 of the bill it provides for injunctive relief where the health department comes in and takes the action. Senator Lensink stated that he would like to see somewhere in the bill where failure to file a statement within a certain period of time would mean that the parents objected for personal reasons. Senator Norman concurred with Senator Lensink and stated that if it gets to be too much of a problem and the level of immunization is falling way down in the next two years, then we can take a look at it next session. Chad Smith stated that he feels this bill will just set the school up for a law suit. Senator Himsl pointed out that according to page 4, section 7, on enforcement we are not really keeping the youngster out of school. Senator Van Valkenburg feels that we need the weight of exemption from school. He said that California went through this and found you need some sort of a club over their head. Senator Van Valkenburg feels that maybe we should exempt the student for 3, 7 or 10 days; and then, if the parent refuses to sign, it is deemed for personal reasons. Senator Lensink stated that it is contrary to the law and needs to be amended. Mr.

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Minutes of the Meeting
Public Health, Welfare and Safety Committee
February 5, 1979
Page 4

Taylor stated that the Committee could revise the bill starting on line 4, page 2 by renumbering phrase starting as "a governing" as subsection (1), renumber subsections (1), (2), and (3) to subsections (a), (b), and (c) and create a new subsection (2) which would read along the lines that "failure to act in a reasonable period of time as determined by the board is a refusal on the grounds provided under section 4." Mr. Smith stated that he would like 3 days because that won't be against the Constitution. Senator Lensink moved that we adopt the amendment as stated by Mr. Taylor. Motion was seconded and carried unanimously.

Mr. Smith said that this takes care of the rest of his proposed amendments.

ACTION ON SENATE BILL 175: Senator Palmer moved that Senate Bill 175, as amended, DO PASS. A roll call vote was taken, and the motion carried unanimously.

ADJOURNMENT: There being no further business discussed, the meeting was adjourned at 2:10 p.m.


S. A. OLSON, CHAIRMAN

SENATE COMMITTEE

PUBLIC HEALTH

Date 2-5-79 Bill No. 175 Time 2:10 p.m.

NAME	YES	NO
Senator Matt V. Himsel	✓	
Senator Everett R. Lensink	✓	
Senator Bill Norman	✓	
Senator Bob Palmer	✓	
Senator Patrick Ryan	✓	
Senator A. T. Rasmussen, Vice-Chairman	absent	
Senator S. A. Olson, Chairman	✓	

Judy J. Olson
Secretary

S. A. Olson
Chairman

Motion: Do Pass Senate Bill 175 as amended

(include enough information on motion--put with yellow copy of committee report.)

SENATE BILL NO. 175

Amend Senate Bill No. 175 as follows:

1. On page 1, line 16, by deleting the words "a trustee" and substituting in lieu thereof the words "the board of trustees".

2. On page 1, starting on line 17, by deleting everything after the word "district" and deleting further all of lines 18 and 19 and substituting in lieu thereof the words "or the administrator of a private school".

3. On page 2, delete lines 4 through 13, being all of section 2.

4. On page 2, delete lines 14 through 20, being all of section 3.

5. On page 4, beginning on line 15, delete everything following the period after the word "enforcement" and deleting further all of lines 16 through 21, being all of subsection (1) of section 7.

6. On page 5 in line 19, delete the words and punctuation "the minor is excluded from school,".

7. By re-numbering the necessary sections and subsections in accordance with the above amendments.

STATEMENT ON SENATE BILL NO. 175
BEFORE THE SENATE PUBLIC HEALTH COMMITTEE

I appear on behalf of the Montana School Boards Association in support of Senate Bill No. 175 and wish to inform the committee that the Association adopted a resolution at its annual meeting on November 1, 1978 in support of the general concept of immunization of all school children against the more common communicable diseases. However, at the time the resolution was passed, there was no opportunity to examine Senate Bill No. 175 so the means of implementing the concept was not available for examination.

We do, however, have some serious concerns about the manner of enforcement of mandatory immunization and do not feel that it is proper to place the burden of enforcement upon the school districts. We must remember that the primary obligation of school districts is education and that it is the prime responsibility of the Department of Health and other health officials to enforce public health matters. Section 7, subsection 1 of the bill found on page 4 beginning at line 15 provides that the governing authority of any school shall prohibit from further attendance any pupil enrolled who has failed to obtain the immunizations required. In other words, it becomes the duty of the school district to prohibit attendance by the pupil by reason of his parents' or guardian's failure to comply with the law. Any legal action by a parent or student would therefore be against the school district because it is the school that would have offended the individuals by failure to admit the student.

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The courts have ruled that every child has a constitutional right to education and therefore it is obvious that any statute that would interfere with that constitutional right would be struck down. See Butler Area School District -v- Butler Education Association, 391 A.2d 1295 (1978).

It is ironic to note that the only person or persons who would bring such an action would be individuals who are trying to test the act, because of the fact that enforcement of the proposed law is so loose as to be really meaningless. All an individual has to do to avoid compliance is to present a written statement indicating that immunization is contrary to the personal beliefs of that individual and he is thereupon exempted from compliance. Any reasonable person not desiring to comply would readily sign such a statement. We are confident that because of the many test cases brought against school districts in Montana during the past two years that some individual, association or governmental agency will most certainly challenge the constitutionality of this proposed law the first time an attempt is made to enforce it. We feel that the following deletions should be made from the bill so that the enforcement will be exercised against the parents or guardians of the child who refuse to comply. This can be accomplished by deleting the following portions of the bill:

Section 2 on page 2, lines 4 through 13;

Section 3 on page 2, lines 14 through 20;

Section 4, subsection 3 on page 3, line 22 through
page 4, line 6 and

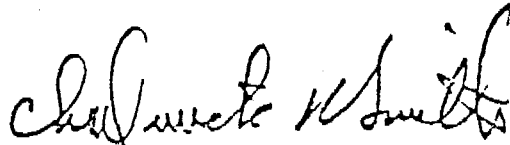
Section 8, subsection 2 on page 5, lines 16 through 23.

With the above deletions, enforcement would be provided by the remaining subsections of Section 8 on page 5 and would subject offenders to the civil penalty provided in Section 9 on page 6.

The school districts do not object to assisting in the keeping of records as provided in Section 5 on page 4 and do not feel that the cost of such participation would be substantial.

Furthermore, the definition of "governing authority" in Section 1, page 1, lines 16 through 19 should be amended to indicate that the governing authority is the Board of Trustees of a public school and the administrator of a private school.

Respectfully submitted,



CHADWICK H. SMITH, on behalf of
Montana School Boards Association
26 W. 6th Avenue - P. O. Box 604
Helena, Montana 59601
Lobbyist No. 52-79

MEMORANDUM ESTABLISHING CONSTITUTIONALITY OF SB 175,
REQUIRING IMMUNIZATION AS A CONDITION OF SCHOOL ATTENDANCE

Chad Smith, attorney for the School Board Association, has made the assertion that there is a constitutional right to an education which would render invalid any statute interfering with it. Careful research indicates that he is wrong.

First, there is no fundamental right, under the U.S. Constitution, to an education. The U.S. Supreme Court has said so, and other federal courts have followed suit. See San Antonio School District v. Rodriguez, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed2d 16 (1973); Scott v. Board of Education of City of N.Y., 420 F.Supp. 876 (D.C.N.Y. 1976); Carroll v. Dept. of Health, Education and Welfare, 410 F.Supp. 234, 239 (D.C.Kent. 1976); Zoll v. Anker, 414 F.Supp. 1024 (D.C.N.Y. 1976).

There may, however, be a right to an education under various state constitutions, including our own. New Jersey, New York and Arizona are three such states. All have constitutional provisions similar to ours relating to education. [Cases stating that those three states have a constitutional right to education are: Zoll v. Anker, Id., (New York); Shofstall v. Hollins, 515 P.2d 590, 110 Ariz. 88 (1973) (Arizona); and Robinson v. Cahill, 339 A.2d 193, 67 N.Y. 333 (1975) (New Jersey)].

Each of the above three states, however, has enacted compulsory vaccination statutes as a condition of school attendance, similar to SB 175, and New York and New Jersey have had cases which reaffirmed the police power of the state to pass a law protecting public health, welfare, and safety, specifically, to require immunization as a condition of enrollment in school. [See Bd. of Education of Mountain Lakes v. Maas, 152 A.2d 394, 404; 56 N.J.Super. 245 (1959), affm'd per curiam, 31 N.J. 537, 158 A.2d 330, cert. denied, 363 U.S. 843 (1960); and McCartney v. Austin, 298 N.Y.S2d 26 (1969).]

The basic principle routinely being followed across the country is that constitutional rights are not absolute, but may have to give way to the extent necessary to protect the health and welfare of the general public. Crowley v. Christiansen, 137 U.S. 86, 89 (1890); Sadlock v. Bd. of Education, 58 A.2d 218, 137 N.J.L. 85 (1948). States clearly have the police power to enact compulsory vaccination laws; such has been the consistent position of the courts for decades. Jacobsen v. Massachusetts, 197 U.S. 11 (1904).

In conclusion, the weight of legal authority overwhelmingly validates statutes such as SB 175, and any school district excluding a child pursuant to its terms could be assured its actions had a firm constitutional base.

ROLL CALL
PUBLIC HEALTH COMMITTEE

46th LEGISLATIVE SESSION - - 1979

Date 2/5/79

NAME	PRESENT	ABSENT	EXCUSED
Olson, S. A., Chairman	☒	☐	☐
Rasmussen, A. T., V. Chr.	☐	☒	☐
Hims1, Matt V.	☒	☐	☐
Lensink, Everett R.	☒	☐	☐
Norman, Bill	☒	☐	☐
Palmer, Bob	☒	☐	☐
Ryan, Patrick L.	☒	☐	☐
	☐	☐	☐
	☐	☐	☐
	☐	☐	☐
	☐	☐	☐
	☐	☐	☐
	☐	☐	☐
	☐	☐	☐
	☐	☐	☐
	☐	☐	☐

Each day attach to minutes.

SB 323, introduced bill, be amended as follows:

1. Page 3, line 6.

Following: "(a)"

Insert: "except for crude oil and natural gas refineries, and facilities and associated facilities designed for or capable of producing, gathering, processing, transmitting, transporting, or distributing crude oil or natural gas,"

2. Page 3, line 7.

Following: "facilities"

Strike: ", except for oil and gas refineries"

3. Page 3, line 8 through 10.

Following: line 7

Strike: lines 8 through 10 in their entirety

4. Page 3, line 11.

Following: line 10

Strike: "crude oil, that are"

And, as so amended, do pass. Report adopted.

SJR 8 do pass. Report adopted.

PUBLIC HEALTH, WELFARE, AND SAFETY (Rasmussen, Vice-Chairman)

SB 109, introduced bill, be amended as follows:

1. Page 3, line 18.

Following: "officer"

Insert: ", or if there is no local health officer the sanitarian,"

2. Page 4, line 7.

Following: "officer"

Insert: ", or if there is no local health officer the sanitarian,"

3. Page 4, line 14.

Following: "officer"

Insert: ", or if there is no local health officer the sanitarian,"

4. Page 4, line 16.

Following: line 15

Insert: "Section 5. THERE IS A NEW MCA SECTION THAT READS:

Notification of and validation by local health officer. (1) When the department receives an application for a license pursuant to Title 50, chapters 50 through 52, the local health officer in the county where the establishment is located must be notified in writing of the application within 15 days after the department has received the application.

(2) If the department decides to issue a license pursuant to the provisions of Title 50, chapters 50, 51, or 52, the department shall notify the local health officer in writing.

(3) A license issued by the department under Title 50, chapters 50 through 52 is not valid until signed by the local health officer in the county where the establishment is located.

(4) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under Title 50, chapters 50 through 52, make a final decision on whether the license will be validated.

2-10-1979

(5) Failure of the local health officer to validate the license within 15 days after its receipt is a refusal."

5. Page 4, line 16.

Following: amendment 4

Insert: "Section 6. THERE IS A NEW MCA SECTION THAT READS:

Refusal by local health officer — appeal to board. (1) The local health officer may only refuse to validate a license issued under Title 50, chapters 50 through 52, upon a finding that the requirements of these chapters and any rules implementing them are not satisfied. If the local health officer refuses to validate the license, he shall notify the applicant and the department in writing stating his reasons.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the local board of health within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the local board of health shall be held pursuant to the contested case provisions of the Montana Administrative Procedure Act."

Renumber: all subsequent sections

6. Page 5, line 23.

Following: line 22

Insert: "(11) Provide consultation to school and local community health nurses in the performance of their duties;"

Renumber: all subsequent sections

7. Page 6, line 6.

Following: line 5

Insert: "(14) Provide consultation to local boards of health;"

8. Page 6, line 21.

Following: line 20

Insert: "SECTION 8. CODIFICATION.

sections 5 and 6 are intended to be codified as an integral part of Title 50 and the provisions contained in Title 50 apply to Sections 5 and 6."

Renumber: all subsequent sections

And, as so amended, do pass. Report adopted.

SB 175, introduced bill, be amended as follows:

1. Page 1, line 16.

Following: "means"

Strike: "a trustee"

Insert: "the board of trustees"

2. Page 1, line 17.

Following: "district"

Strike: ", a principal, an"

Insert: "or the"

Following: "administrator"

Strike: ", or any other"

3. Page 1, line 18.

Following: line 17

Strike: "authority"
 Following: "private"
 Strike: "or public"
 Following: "school"
 Strike: remainder of lines 18 and 19 in their entirety

4. Page 2, line 4.
 Following: "required,"
 Insert: "(1)"

5. Page 2, line 7.
 Following: line 6
 Strike: "(1)"
 Insert: "(a)"

6. Page 2, line 12.
 Following: line 11
 Strike: "(2)"
 Insert: "(b)"

7. Page 2, line 13.
 Following: line 12
 Strike: "(3)"
 Insert: "(c)"

8. Page 2, line 13.
 Following: "exemption"
 Insert: "(2) Failure to act as provided in subsection (1) in a reasonable period of time, as determined by the board of trustees, is an exemption on the grounds provided in [subsection (1) of section 4.]"

And, as so amended, do pass. Report adopted.

STATE ADMINISTRATION (Story, Chairman):
 SB 138, introduced bill, be amended as follows:

1. Page 2, line 16.
 Following: "\$2"
 Strike: "\$5"
 Insert: "\$2.25"

2. Page 3, line 2.
 Following: "\$6"
 Strike: "\$20"
 Insert: "\$5.50"

3. Page 3, line 4.
 Following: "\$5"
 Strike: "\$20"
 Insert: "\$5.50"

4. Page 3, line 13.
 Following: "\$5"
 Strike: "\$10"
 Insert: "\$5.50"

5. Page 3, line 17.
 Following: "10"
 Strike: "25"
 Insert: "15"

6. Page 6, line 16.
 Following: "\$2"

Strike: "\$5"
 Insert: "\$2.25"

7. Page 8, line 7.
 Following: "\$2"
 Strike: "\$5"
 Insert: "\$2.25"

8. Page 9, line 3.
 Following: "\$2"
 Strike: "\$5"
 Insert: "\$2.25"

9. Page 10, line 7.
 Following: line 6
 Strike: "\$5"
 Insert: "\$2.25"

10. Page 11, line 11.
 Following: "\$2"
 Strike: "\$5"
 Insert: "\$2.25"

11. Page 13, line 9.
 Following: "\$20"
 Strike: "\$30"
 Insert: "\$22"

12. Page 13, line 11.
 Following: "\$20"
 Strike: \$30
 Insert: "\$22"

13. Page 13, line 13.
 Following: "\$20"
 Strike: "\$30"
 Insert: "\$22"

14. Page 13, line 17.
 Following: "consolidation,"
 Strike: "\$5"
 Insert: "\$2.25"

15. Page 13, line 19.
 Following: "\$2"
 Strike: "\$5"
 Insert: "\$2.25"

16. Page 13, line 21.
 Following: "\$2"
 Strike: "\$5"
 Insert: "\$2.25"

17. Page 13, line 24.
 Following: line 23
 Strike: "\$5"
 Insert: "\$2.25"

18. Page 14, line 12.
 Following: (twenty)
 Strike: "\$30"
 Insert: "\$22"

63

House Bill No. 445, introduced by Brand, Marks, et al

MOTIONS

Upon motion of Senator Peterson, duly carried, that Senate Bill No. 138 be taken from Second Reading and be rereferred to the Committee on State Administration.

FIRST READING OF BILLS

The following Senate bills were introduced, read first time, and referred to committee:

SB 506, introduced by (Natural Resources Committee), Dover, Etchart, Manley, Roskie, Lockrem, Lowe, Story. Referred to Committee on Natural Resources.

SB 507, introduced by Conover. Referred to Committee on Taxation.

SB 508, introduced by Manley. Referred to Committee on Taxation.

SB 509, introduced by Conover, Boylan. Referred to Committee on Agriculture, Livestock, and Irrigation.

SB 510, introduced by Conover. Referred to Committee on Taxation.

The following House bills were introduced, read first time, and referred to committee:

HB 100, introduced by Keyser, Lund, Donaldson, Spilker, Kanduch, Kvaalen, Meyer, Smith, K. Robbins, Teague, (By Request of the Attorney General). Referred to Committee on Highways and Transportation.

HB 228, introduced by Reichert. Referred to Committee on Business and Industry.

HB 302, introduced by Quilici, Manning, Dussault, Pavlovich, Menahan, Nathe, Harrington, Daily, Feda. Referred to Committee on Labor and Employment Relations.

HB 377, introduced by Nathe. Referred to Committee on Agriculture, Livestock, and Irrigation.

HB 425, introduced by Yardley. Referred to Committee on Finance and Claims.

HB 445, introduced by Brand, Marks, Menahan, Kanduch, Manning, Magone, Vincent, Feda, Vinger, Ernst. Referred to Committee on Finance and Claims.

HB 493, introduced by Cooney, (By Request of the Department of Justice). Referred to Committee on Highways and Transportation.

SECOND READING OF BILLS (COMMITTEE OF THE WHOLE)

Senator Lockrem in the Chair.

Senate resumed. President Mathers in the Chair.

Mr. President: We, your Committee of the Whole, having had under consideration business on Second Reading, recommend as follows:

That Senate Bill No. 217 do pass. Opposed by Anderson, Blaylock, Mehrens, Norman, Regan, R. Smith, Towe, Van Valkenburg.

That Senate Bill No. 225 do pass. Unanimously passed.

That Senate Bill No. 99 be amended as follows:

1. Page 11, line 19.
Following: "liquor"
Insert: "or table wine"

2. Page 13, line 25.

Following: " 9."

Insert: "State distribution."

And, as so amended, do pass. Opposed by Hager, Himsl, Lockrem, Manley, Regan, Roskie, Towe.

That Senate Bill No. 109 do pass. Unanimously passed.

That Senate Bill No. 139 do pass. Unanimously passed.

That Senate Bill No. 153 do pass. Unanimously passed.

That Senate Bill No. 170 do pass. Unanimously passed.

Senator Lockrem relinquished the Chair.

Senator Peterson assumed the Chair.

That Senate Bill No. 171 do pass. Unanimously passed.

Senator Peterson relinquished the Chair.

Senator Lockrem assumed the chair.

That Senate Bill No. 175 do pass. Opposed by Hafferman.

That Senate Bill No. 199 do pass. Unanimously passed.

That Senate Bill No. 209 be amended as follows:

1. Page 1, line 25.

Following: line 24

Strike: line 25 through "both" on page 2, line 1.

Insert: "written certification that the holders of such policies will benefit fully from the increased earnings of the insurer resulting from the use of an interest rate in excess of the 6% per annum, such as from higher interest income to the company on policy loans, higher investment yield resulting from a reduction in policy loans because of the higher policy loan interest rate, and any additional income to the company resulting from the use of such higher interest rate in any manner whatsoever. These benefits to the policyholder shall be reflected through the use of higher dividends or lower premiums, or both"

And, as so amended, do pass. Unanimously passed.

That Senate Bill No. 213 do pass. Unanimously passed.

That Senate Bill No. 220 do pass. Opposed by Aklestad, Dover, Lockrem, Manley, Ryan, Severson, E. Smith, R. Smith.

That Senate Bill No. 224 do pass. Opposed by Jergeson, Towe.

That the Committee rise and report, and beg leave to sit again. (Lockrem, Chairman)

Upon motion of Senator Lockrem, duly carried, the foregoing Report of the Committee of the Whole was adopted.

At the request of the President, and without objection, the Senate reverted to Order of Business No. 6.

MOTIONS

Upon motion of Senator Stephens, duly carried, the Senate recessed to the Call of the Chair.

Absent or not voting: Anderson, Van Valkenburg.
Total 2

Senate Bill No. 113 was passed by the following vote:

Ayes: Aklestad, Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Dover, Fasbender, Galt, Goodover, Graham, Hafferman, Hager, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lensink, Lockrem, Lowe, Manley, Manning, McCallum, Mehrens, Nelson, Olson, O'Hara, Palmer, Rasmussen, Regan, Roskie, Ryan, Severson, E. Smith, R. Smith, Stephens, Stimatz, Story, Thiessen, Thomas, Turnage, Watt, Mr. President.
Total 45

Noes: Towe.
Total 1

Excused: Norman, Peterson.
Total 2

Absent or not voting: Etchart, Van Valkenburg.
Total 2

Senate Bill No. 139 was passed by the following vote:

Ayes: Aklestad, Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Dover, Etchart, Fasbender, Galt, Goodover, Graham, Hafferman, Hager, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lensink, Lockrem, Lowe, Manley, Manning, McCallum, Mehrens, Nelson, Olson, O'Hara, Palmer, Rasmussen, Regan, Roskie, Ryan, Severson, E. Smith, R. Smith, Stephens, Stimatz, Story, Thiessen, Thomas, Towe, Turnage, Van Valkenburg, Watt, Mr. President.
Total 48

Noes: None.
Total 0

Excused: Norman, Peterson.
Total 2

Absent or not voting: None.
Total 0

Senate Bill No. 153 was passed by the following vote:

Ayes: Aklestad, Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Dover, Etchart, Fasbender, Galt, Goodover, Graham, Hafferman, Hager, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lensink, Lockrem, Lowe, Manley, Manning, McCallum, Mehrens, Nelson, Olson, O'Hara, Palmer, Rasmussen, Regan, Roskie, Ryan, Severson, E. Smith, R. Smith, Stephens, Stimatz, Story, Thiessen, Thomas, Towe, Turnage, Van Valkenburg, Watt, Mr. President.
Total 48

Noes: None.
Total 0

Excused: Norman, Peterson.
Total 2

Absent or not voting: None.
Total 0

Senate Bill No. 170 was passed by the following vote:

3rd reading vote

Ayes: Aklestad, Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Dover, Etchart, Fasbender, Galt, Graham, Hager, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lensink, Lockrem, Lowe, Manley, Manning, McCallum, Mehrens, Nelson, Olson, O'Hara, Palmer, Rasmussen, Regan, Roskie, Ryan, Severson, E. Smith, R. Smith, Stephens, Stimatz, Story, Thiessen, Thomas, Towe, Turnage, Van Valkenburg, Watt, Mr. President.

Total 46

Noes: Goodover, Hafferman.
Total 2

Excused: Norman, Peterson.
Total 2

Absent or not voting: None.
Total 0

Senate Bill No. 171 was passed by the following vote:

Ayes: Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Etchart, Fasbender, Galt, Goodover, Graham, Hafferman, Hager, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lensink, Lockrem, Lowe, Manley, Manning, McCallum, Mehrens, Nelson, Olson, O'Hara, Palmer, Rasmussen, Regan, Roskie, Ryan, Severson, E. Smith, R. Smith, Stephens, Stimatz, Thiessen, Thomas, Towe, Turnage, Van Valkenburg, Watt, Mr. President.
Total 45

Noes: Aklestad, Dover, Story.
Total 3

Excused: Norman, Peterson.
Total 2

Absent or not voting: None.
Total 0

Senate Bill No. 175 was passed by the following vote:

Ayes: Aklestad, Anderson, Boylan, B. Brown, S. Brown, Conover, Dover, Etchart, Fasbender, Galt, Goodover, Graham, Hager, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lensink, Lockrem, Lowe, Manley, Manning, McCallum, Mehrens, Nelson, Olson, O'Hara, Palmer, Rasmussen, Regan, Roskie, Ryan, Severson, E. Smith, R. Smith, Stephens, Stimatz, Story, Thiessen, Thomas, Towe, Turnage, Van Valkenburg, Watt, Mr. President.
Total 46

Noes: Blaylock, Hafferman.
Total 2

Excused: Norman, Peterson.
Total 2

Absent or not voting: None.
Total 0

Senate Bill No. 199 was passed by the following vote:

Ayes: Aklestad, Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Dover, Etchart, Fasbender, Galt, Goodover, Graham, Hafferman, Hager, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lensink, Lockrem, Manley, Manning, McCallum, Mehrens, Nelson, Olson, O'Hara, Palmer, Rasmussen, Regan, Roskie, Ryan, Severson, E. Smith, R. Smith, Stephens,

SENATE BILL NO. 175

INTRODUCED BY VAN VALKENBURG, OLSON, COONEY, ELLIS,

BENNETT, TURNAGE, HIMSL, TOWE, B. BROWN

BY REQUEST OF THE DEPARTMENT

OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR
IMMUNIZATION OF PUPILS IN PUBLIC AND PRIVATE SCHOOLS;
REPEALING SECTION 20-5-401, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. For the purposes of [this
act], the following definitions apply:

(1) "Department" means the department of health and
environmental sciences provided for in Title 2, chapter 15,
part 21.

(2) "Governing authority" means a trustee ~~THE BOARD OF~~
~~TRUSTEES~~ of a school district ~~or a principal or the~~
~~administrator or any other authority~~ of a private or public
school ~~responsible for the operation of the school.~~

(3) "Immunization" means induction of a state of
resistance to a disease through administration of an
immunizing agent.

(4) "Local health officer or department" means a city,
city-county, county, or district health officer or

department.

(5) "School" means an institution for the teaching of
individuals, the curriculum of which is comprised of the
work of any combination of kindergarten through grade 12.

Section 2. Immunization required. (1) A governing
authority may not enroll any person as a pupil in any school
unless, prior to enrollment, the person:

(A) has been immunized against diphtheria,
pertussis, tetanus, poliomyelitis, rubella, and measles
(rubeola) in the manner and with immunizing agents approved
by the department, except that pertussis vaccination is not
required for a person 7 years of age or older;

(B) qualifies for conditional enrollment; or
(C) files for an exemption.

~~(2) FAILURE TO ACT AS PROVIDED IN SUBSECTION (1) IN A
REASONABLE PERIOD OF TIME, AS DETERMINED BY THE BOARD OF
TRUSTEES, IS AN EXEMPTION ON THE GROUNDS PROVIDED IN
[SUBSECTION (1) OF SECTION 4].~~

Section 3. Conditional enrollment. A person who has
not been immunized against each disease listed in [section
2] may be enrolled by the governing authority on condition
that he has received one or more doses of polio, measles
(rubeola), rubella, diphtheria, pertussis, and tetanus
vaccine, except that pertussis vaccine is not required for a
person 7 years of age or older.

Section 4. Personal, religious, or medical exemption.

(1) When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking enrollment, or the person seeking enrollment, if an adult, signs and files with the governing authority a written statement on a form prescribed by the department stating that immunization is contrary to the personal or religious beliefs of the signer, immunization of the person seeking enrollment may not be required prior to enrollment in any school. The statement must be maintained as part of the person's immunization records.

(2) When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking enrollment, or the person seeking enrollment, if an adult, files with the governing authority a written statement signed by a physician licensed to practice medicine in any jurisdiction of the United States or Canada stating that the physical condition of the person seeking enrollment or medical circumstances relating to him indicate that some or all of the required immunizations are not considered safe and indicating the specific nature and probable duration of the medical condition or circumstances which contraindicate immunization, he is exempt from the requirements of [this act] to the extent indicated by the physician's statement. The statement must be maintained as part of the person's

immunization records.

(3) Whenever there is good cause to believe that a person for whom an exemption has been filed under this section has a disease or has been exposed to a disease listed in [section 2] or will as the result of school attendance be exposed to such disease, the person may be excluded from the school by the local health officer or the department until the excluding authority is satisfied that the person no longer risks contracting or transmitting that disease. The exclusion period may not exceed 30 calendar days.

Section 5. Immunization record. The governing authority of each school shall require written evidence of each pupil's immunization against the diseases listed in [section 2] and shall record the immunization of each pupil as part of his permanent school record on a form prescribed by the department.

Section 6. Rulemaking. The department may adopt rules necessary to implement the provisions of [this act].

Section 7. Enforcement. (1) The governing authority of any school shall prohibit from further attendance any pupil enrolled conditionally who has failed to obtain the immunizations required by [section 2(1)] within time periods established by the department until that pupil has been immunized as required by the department or unless that pupil

1 has been exempted under [section 4].

2 (2) Each governing authority shall file a written
3 report on the immunization status of all pupils under its
4 jurisdiction with the department and the local health
5 department at times and on forms prescribed by the
6 department.

7 (3) The local and state health departments shall have
8 access to all information relating to immunization of any
9 pupil in any school.

10 Section 8. Failure to immunize or claim exemption --
11 injunction. (1) A parent, guardian, or adult having the
12 responsibility for the care and custody of a minor required
13 by law to attend school shall elect to do one of the
14 following:

15 (a) present evidence to the school that the minor has
16 been immunized against the diseases specified in [section
17 2];

18 (b) take action to fully immunize the minor against
19 the diseases listed in [section 2], in the manner and with
20 immunizing agents approved by the department;

21 (c) file for an exemption pursuant to [section 4].

22 (2) If, as a result of the parent, guardian, or
23 responsible adult's failure to make the election referred to
24 in subsection (1), the minor is excluded from school, the
25 department or the local health department may seek an

1 injunction requiring the parent, guardian, or responsible
2 adult to elect and perform one of the alternatives listed in
3 subsection (1).

4 (3) Injunction is the exclusive remedy for failure to
5 take any of the actions referred to in subsection (1).

6 Section 9. Civil penalty. (1) Any person who violates
7 any provision of [this act], any rule promulgated under
8 [this act], or any order made pursuant to [this act], with
9 the exception of [section 8] and any rule adopted or order
10 issued pursuant to [section 8], is subject to a civil
11 penalty not to exceed \$1,000. The department or the local
12 health department may institute and maintain any enforcement
13 proceedings hereunder.

14 (2) Action under subsection (1) is not a bar to
15 enforcement of [this act] or of rules or orders made under
16 it by injunction or other appropriate civil remedies.

17 (3) An action for a civil remedy to enforce [this act]
18 or rules or orders made under it may be brought in the
19 district court of any county where a violation occurs or is
20 threatened.

21 Section 10. Severability. If part of this act is
22 invalid, all valid parts that are severable from the invalid
23 part remain in effect. If a part of this act is invalid in
24 one or more of its applications, the part remains in effect
25 in all valid applications that are severable from the

1 invalid applications.

2 Section 11. Codification. The code commissioner shall
3 codify this act as an integral part of Title 20, and the
4 provisions of Title 20 apply to this act.

5 Section 12. Applicability. Sections 1 through 5 and
6 sections 7 through 9 apply after August 1, 1980.

7 Section 13. Repealer. Section 20-5-401, MCA, is
8 repealed effective August 1, 1980.

 -End-

HB 872, introduced by Pistoria. Referred to Committee on Business and Industry.

HJR 47, introduced by Underdal, Keyser, Lien, Stobie, Jensen, Burnett, Hand, Hayne. Referred to Committee on State Administration.

The following Senate bills were introduced, read first time and referred to committees:

SB 109, introduced by Ryan, Rasmussen. Referred to Committee on Human Services.

SB 113, introduced by Graham, (By Request of the Code Commissioner). Referred to Committee on Highways and Transportation.

SB 139, introduced by Hazelbaker, (By Request of the Code Commissioner). Referred to Committee on Business and Industry.

SB 153, introduced by Story, (By Request of the Administrative Code Committee). Referred to Committee on Judiciary.

SB 170, introduced by Rasmussen, B. Brown. Referred to Committee on State Administration.

SB 171, introduced by Lockrem, Rasmussen, Thiessen, Towe. Referred to Committee on State Administration.

SB 175, introduced by Van Valkenburg, Olson, Cooney, Ellis, Bennett, Turnage, Himsl, Towe, B. Brown, (By Request of the Department of Health and Environmental Sciences). Referred to Committee on Human Services.

SB 199, introduced by Turnage. Referred to Committee on State Administration.

SB 209, introduced by S. Brown, Thomas, Mehrens, Hazelbaker, Roskie, Turnage, Fasbender, Ryan, Hager. Referred to Committee on Business and Industry.

SB 213, introduced by Blaylock, (By Request of the Secretary of State). Referred to Committee on State Administration.

SB 217, introduced by B. Brown, Turnage, Rasmussen, Stimatz, Ryan. Referred to Committee on Judiciary.

SB 220, introduced by Turnage, (By Request of the State Tax Appeal Board). Referred to Committee on Taxation.

SB 224, introduced by Kolstad, McCallum, Nelson, Aklestad, Olson, Thomas, Norman, Goodover, Ryan. Referred to Committee on Local Government.

SB 225, introduced by Ryan. Referred to Committee on Judiciary.

SB 227, introduced by E. Smith, Kolstad, Galt, Boylan, Aklestad, Conover, McCallum, Severson, Hager, Mathers, Ryan, Stephens. Referred to Committee on Fish and Game.

SB 232, introduced by S. Brown. Referred to Committee on Judiciary.

SB 261, introduced by Turnage, Bardanouve, Himsl, (By Request of the Department of Administration). Referred to Committee on Judiciary.

SB 276, introduced by B. Brown, Dussault, Fasbender, Stephens, M. Anderson, Blaylock, Turnage, Tropila, Fabrega, Scully, Hemstad, Uhde, Ramirez, Regan, Roskie, McCallum, R. Smith, S. Brown, Rasmussen, Stimatz. Referred to Committee on Education and Cultural Resources.

THIRD READING OF BILLS

The following bills having been read three several times, title and history agreed to, were disposed of in the following manner:

House Bill No. 264 was passed by the following vote:

Ayes: Anderson, Azzara, Baeth, Bardanouve, Bengtson, Bertelsen, Brand, Conroy, Cooney, Curtiss, Daily, Dassinger, Day, Donaldson, Dozier,

Dussault, Ellerd, Ellis, Ellison, Ernst, Eudaily, Fagg, Fedra, Frates, Gesek, Gilligan, Gould, Hand, Harper, Harrington, Hayne, Hemstad, Hirsch, Holmes, Hurwitz, Iverson, Johnson, Johnston, Kanduch, Keedy, Kemmis, Keyser, Kropp, Kvaalen, Lien, Lory, Lund, McBride, Magone, Manning, Manuel, Marks, Menahan, Metcalf, Meyer, Moore, Nathe, Nordtvedt, Oberg, O'Connell, Pavlovich, Pistoria, Porter, Quilici, Ramirez, Reichert, H. Robbins, K. Robbins, Rosenthal, Roth, Sales, Schultz, Scully, Seifert, Shelden, Smith, South, Spilker, Staigmillar, Stobie, Teague, Thoft, Tropila, Uhde, Underdal, Vincent, Vinger, Waldron, Williams, Wood, Wyrick, Yardley, Mr. Speaker.

Total 93

Noes: None.

Total 0

Excused: Bennett, Burnett, Jensen, Sivertsen.

Total 4

Absent or not voting: Fabrega, Huennekens, Kessler.

Total 3

House Bill No. 313 was passed by the following vote:

Ayes: Anderson, Azzara, Baeth, Bardanouve, Bengtson, Bertelsen, Brand, Cooney, Curtiss, Daily, Donaldson, Dozier, Dussault, Ellis, Ernst, Eudaily, Fabrega, Fagg, Fedra, Frates, Gesek, Gilligan, Gould, Harper, Harrington, Hemstad, Hirsch, Hurwitz, Iverson, Johnson, Kanduch, Keedy, Kemmis, Keyser, Kvaalen, Lien, Lory, Lund, McBride, Magone, Manning, Manuel, Marks, Menahan, Metcalf, Meyer, Moore, Nathe, Nordtvedt, Oberg, Pavlovich, Pistoria, Porter, Quilici, Ramirez, Reichert, H. Robbins, K. Robbins, Schultz, Scully, Seifert, Shelden, South, Spilker, Teague, Thoft, Tropila, Uhde, Vincent, Vinger, Waldron, Williams, Yardley, Mr. Speaker.

Total 74

Noes: Conroy, Dassinger, Ellerd, Hand, Hayne, Johnston, Kropp, Roth, Sales, Smith, Staigmillar, Stobie, Underdal, Wood, Wyrick.

Total 15

Excused: Bennett, Burnett, Jensen, Sivertsen.

Total 4

Absent or not voting: Day, Ellison, Holmes, Huennekens, Kessler, O'Connell, Rosenthal.

Total 7

House Bill No. 422 was passed by the following vote:

Ayes: Anderson, Azzara, Baeth, Bardanouve, Bengtson, Bertelsen, Brand, Conroy, Cooney, Curtiss, Daily, Dassinger, Day, Donaldson, Dozier, Dussault, Ellerd, Ellis, Ellison, Ernst, Eudaily, Fabrega, Fagg, Fedra, Frates, Gesek, Gilligan, Gould, Hand, Harper, Harrington, Hayne, Hemstad, Hirsch, Holmes, Hurwitz, Iverson, Johnson, Johnston, Kanduch, Keedy, Kemmis, Keyser, Kropp, Kvaalen, Lien, Lory, Lund, McBride, Magone, Manning, Manuel, Marks, Menahan, Metcalf, Meyer, Moore, Nathe, Nordtvedt, Oberg, O'Connell, Pavlovich, Pistoria, Porter, Quilici, Ramirez, Reichert, H. Robbins, K. Robbins, Rosenthal, Roth, Sales, Schultz, Seifert, Shelden, Smith, South, Spilker, Staigmillar, Stobie, Teague, Thoft, Tropila, Uhde, Underdal, Vincent, Vinger, Waldron, Williams, Wood, Wyrick, Yardley, Mr. Speaker.

Total 93

Noes: None.

February 28, 1979

HUMAN SERVICES COMMITTEE PROCEEDINGS:

A Human Services Committee meeting was held February 28, 1979, in the Capitol Annex room #20. The meeting was called to order by Chairman Holmes at 12:30, and all members were present except Representatives Stobie and Wyrick.

SENATE BILL #109 -- SPONSOR: Senator Ryan, District #19, introduced his bill and stated that it was from a request of the Department of Health and Environmental Sciences and local health boards. This bill clarifies the responsibilities of the person who does the health inspections as also the person who authorizes licensing. The role of the Department has changed from supervisory to consultation to local health boards. PROPONENTS: Mr. Don Bizzenie, Health Officer for Cascade County, pointed out what he thought were the two important concepts of the bill; one being, that since local health boards actually work in the field with businesses, etc., they are the ones who should be controlling licensing, since they better know the subjects, and secondly it would put local boards in a position of autonomy rather than so strictly supervised by the Department. Mr. Vern Sloan, Department of Health and Environmental Sciences, stated that he was in favor of this bill with the proposed amendments he handed out. Mr. Bob Johnson, Health Officer of Lewis and Clark County, stated that he agreed with the amendments and that the bill will not change anything that is not already being done currently. He felt that the bill would merely bring the statute's language into a more current form. Mr. Ed Marsh, Executive Director of the Montana Nurses' Association, stated that they supported the bill and its amendments. Senator Ryan in closing, requested that the committee give this bill a do pass recommendation. Questions were given and answered.

SENATE BILL #175 -- SPONSOR: Senator VanValkenburg, District #50, stated that he was the initial sponsor to this bill requested by the Department of Health and Environmental Sciences and that he felt very fortunate to do so. This bill which he introduced would make it a mandatory requirement to immunize school age children rather than permissive as the laws currently stand. This bill is important he explained to see that in the future there aren't large outbreaks of diseases, like there have been in the past. Children are exempt from immunization only for either personal, medical, or religious reasons. Currently there are only about 60% of our school aged children who are immunized, which is a very low percentage. Passage and implementation of this bill hopes to bring that level up to over 90%. This bill provides for enforcement authority by use of injunctions and provides for civil penalties. PROPONENTS: Dr. Martin Skinner, Department of Health and Environmental Sciences, stated that he supports this bill because of the reasons that the sponsor named and because it provides for a record keeping system as well as procedures. Problems have arisen in controlling diseases because of a lack of sufficient records explaining where problems begin. The following proponents stood in favor of the bill: Dr. J. Strickler, Mr. Jerry Leondorf of the Montana Medical Association,

Alice Armstrong, Mr. T. Carl Johnson of the Montana Association of School Administrators, Mr. David Sexton of the Montana Education Association, Mr. David Lackman of the Montana Health Association, Mr. Ed Mars of the Montana Nurses' Association, and Mr. Chad Smith of the Montana School Board Association. Questions were asked and answered.

SENATE BILL #331 -- SPONSOR: Senator Dover, District #24, introduced his bill stating that it was aimed at the 16 and 17 year olds who get married because of various reasons. This bill provides for two different sessions of counseling before they are granted a marriage license. This bill meets with a great deal of approval from various organizations. He felt that they are going to be stepping into something very big and should be informed of the responsibilities and problems they may encounter. It will give them much needed insight into the realities of marriage as something serious and not fun and games. Ms. Jan Brown, Montana Association of Churches, stated that such a proposal had been in their position papers for this legislative session. She stated that ministers from this group are willing to do counseling and will submit a list of names of all interested parties to individual judges upon passage. This additional counseling will not cost anything, but could save money later for welfare expenses, legal services, etc. Judge Bennett informed Ms. Brown that most couples that are pregnant, feel pressured into marriage. This type of counseling will show them there are many alternatives. He went on further to state that couples who would receive this guidance might in the future go for help before involving themselves in divorce.

The following action was taken:

Rep. Fabrega moved that Senate Bill #109 do pass as amended. This motion carried with a unanimous vote. The consensus of the committee was that Rep. Tropila would carry this bill on the floor.

Rep. O'Connell moved that Senate Bill #175 do pass. This motion carried with a 16 to one vote.

Rep. Feda moved that Senate Bill #331 do pass. This motion carried with a unanimous vote.

The meeting was adjourned at 1:40 by Chairman Holmes.

Polly Holmes

CHAIRMAN

A. Rattiff

SECRETARY

Board of Public Education

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RICHARD L. (RICK) REESE
MARILYN F. MILLER
ASSISTANTS TO THE BOARD

February 27, 1979

TESTIMONY

SB 175 - PUPIL IMMUNIZATION

by

Harriett Meloy, Chairperson
Board of Public Education

TO: Members of the House Public Health Committee

Although I cannot be present on February 27 to testify in favor of SB-175, I would like to submit the following information to the committee for its consideration.

At its meeting of December 12, 1978, the Board of Public Education unanimously adopted the attached resolution favoring state legislation requiring the immunization of school children.

SB-175 addresses the Board's concern about this crucial matter and the Board of Public Education urges your support of the bill.

December 12, 1978

RESOLUTION

WHEREAS, an estimated 80,000 children in Montana under age 15 are inadequately protected against one or more of the seven childhood diseases preventable by immunization; and

WHEREAS, Montana had the highest case rate in the nation for measles in 1977; and

WHEREAS, the case rate of measles has been approximately twice as high in those states without statewide immunization requirements for school entry as in the states with such requirements; and

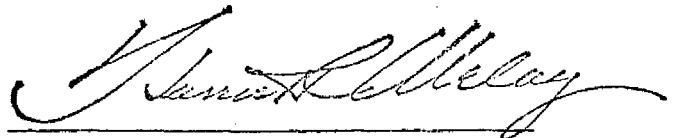
WHEREAS, Montana is one of only six states and territories which does not have statewide immunization laws or regulations for all school children; and

WHEREAS, the current law allowing local school districts to require immunizations has been frequently not adopted and, where adopted, generally unenforced and ineffective; and

WHEREAS, cases and even outbreaks of immunizable childhood diseases continue to occur unnecessarily in Montana;

THEREFORE, BE IT RESOLVED that the Board of Public Education does hereby support and urge the passage of legislation (at the next legislative session) which will create a statewide immunization requirement for all school children in Montana; and

BE IT FURTHER RESOLVED that such a law allow for enforcement by exclusion, and allow for exemption for medical, religious, and personal reasons when recorded in writing.



HARRIETT C. MELOY, CHAIRPERSON



Montana Nurses' Association

1716 NINTH AVENUE

(406) 442-6710

P.O. BOX 5718 * HELENA, MONTANA 59601

S.B. 175: Mandatory Immunization for School-aged Children

Testimony by: Edward Mares, Executive Director, MNA before House Human Services Committee

On behalf of the 1300 members of the Montana Nurses' Association, and especially school nurses and public health nurses across Montana, I offer my full endorsement for Senate Bill 175.

Immunization of school-aged children is an important preventive health measure which will guarantee the control of various communicable diseases in Montana. This legislative proposal will greatly assist the national goals of the "Immunization Initiative" and insures that our children have been vaccinated against these serious diseases.

The State Department of Health has cooperated with local health departments in insuring that rural immunization clinics are publicized and successful. S.B. 175 will not involve additional costs typically associated with implementing a mandated program because the immunization serums are available through the State Health Department.

The Montana Nurses' Association believes that S.B. 175 includes more than sufficient exemptions whereby parents may opt to not have their children immunized. This bill has also received a major amendment in the Senate. This amendment does not destroy intent, nor make S.B. 175 unworkable. This bill is a start toward preventive health for our children.

The important and most valuable aspect of this legislation is that immunization records for school children will finally be available statewide. When there is an outbreak of a disease, public health officials, school nurses, etc. through the record-keeping will at least know, which children have not been immunized.

S.B. 175 is greatly needed for Montana. Registered nurses will assist in implementing this legislation and MNA urges a do-pass recommendation.

Sunburst 1/26

Good inoculation bill

It seems so simple. Six common childhood diseases — hard measles, German measles, diphtheria, whooping cough, tetanus and polio — are preventable by immunization. But perhaps because prevention is so easy and cases dropped in recent years, parents became somewhat lax. Now, rates are increasing.

Four or five years ago, pre-school children were the ones who had measles. Now a group of older children — who haven't been inoculated or haven't had the disease — are vulnerable, according to Rick Crankshaw, coordinator for the Montana immunization program. In 1977 more than 1,100 cases of measles were reported in the state with nearly 80 percent occurring in schoolchildren.

Because the disease hits in late fall and early spring when school is in session, it has a better chance to spread, he explains. School activity trips and vacations can carry it farther afield.

The problem is compounded by the lack of school health records or poorly maintained ones. There simply is no way to quickly identify who might be susceptible during an outbreak.

A solution is in the works, however. A bill requiring children enrolled in public or private schools to be inoculated against the six diseases has been introduced by Sen. Fred Van Valkenburg, D-Missoula. The bill also would establish school immunization records.

It's a good bill. It allows exceptions for medical, personal and religious reasons. With the health records and exceptions on file, youngsters who haven't been inoculated can be isolated and better protected when any disease hits a school, Crankshaw notes.

Montana is one of the last states without such a law — and rates drop in states that have one, he says.

In Sunburst recently a check of school immunization records helped confine a measles outbreak to three cases, according to a recent Tribune article.

Organizations such as Montana Medical Association and School Administrators of Montana endorse the bill. Let's hope it passes to better protect those who do get inoculated — and those who don't.

HEARING ON IMMUNIZATION BILL
CAPITOL BUILDING
2-28-79

Room 20

12:30 P.M.

Gene Dillman, Superintendent

Whitehall School Districts
4, 47 & 2

The Whitehall School Board adopted a policy, in November of 1977, that directed each child (K-12) to meet these minimal immunization requirements:

Four DPT's and three polio (at least one of each given after age 3);

One rubella;

One rubeola.

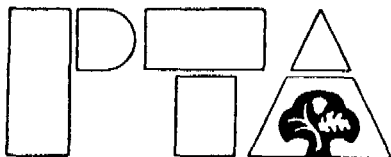
Requirements were to be met by September 6, 1978, or students would not be permitted to attend school until accomplished.

In preparation for carrying out the above policy, the school nurse, with several helpers, went through all health records prior to May of 1978 to determine those students in need of immunizations.

Two free clinics were held prior to the end of the school year in June of 1978 for the purpose of updating immunizations.

Parents cooperated, generally, with a few exceptions, and a week after the opening of the school in September there were about thirty students out of a total enrollment of 750 who were not completely immunized, most of which were new students. By January 10, 1979, all student immunizations were complete.

The greatest problem encountered was getting parents to make immunizations records available to school personnel for checking. The only other problem, which involved only a few parents, was resistance to the Board policy.



MONTANA CONGRESS OF PARENTS AND TEACHERS

5855 Pinewood La.
Missoula, Montana
February 27, 1979

House Human Services Committee
Capitol Bldg.
Helena, Montana

Dear Patricia Gesek:

The Montana Congress of Parents and Teachers supports mandatory immunization of Montana school children. At the 1978 PTA State Convention, we passed a resolution supporting such a law, allowing exemptions only for medical and religious reasons.

We urge that mumps be covered by the immunization program. Mumps can cause deafness that responds to neither surgery nor hearing aids.

Children must be immunized to prevent personal tragedy. Because of the costs of special education for the handicapped, immunization also makes fiscal sense.

We believe that only exemptions for personal, medical, and religious reasons should be allowed. Any further exemptions should be resisted.

Because children are required to attend school, they must be protected from epidemics that spread where people congregate.

Sincerely,

Martha Onishuk
MPTA Legislative Co-ordinator

LEWIS AND CLARK CITY-COUNTY HEALTH DEPARTMENT

TELEPHONE 442-6230

201 SOUTH LAST CHANCE GULCH
HELENA, MONTANA 59601

COMMITTEE TESTIMONY REGARDING: SENATE BILL 175 (Mandatory Immunizations)

Presented by: Allene Mares, RN Lewis and Clark City-County Health Dept.

A representative of The Montana Health Officers Association (Cascade, Yellowstone, Lewis&Clark, Silver Bow, Gallatin, Missoula, Lake, and Flathead Counties)

We support this bill for the following reasons:

- 1) This bill would facilitate immunization record keeping at the local schools. In the event of an outbreak of measles, rubella, mumps, etc. local health department would have up-to-date^{info} regarding each pupils immunization level.

Example: A measles outbreak occurred in Cascade County in 1976-1977. Due to inadequate records, this disease spread through the schools before parents could be contacted to ascertain if their child had been immunized. It required a massive effort on the part of the health dept. to contact those parents and provide immunizations if necessary.

- 2) Should an outbreak occur, the local health department could isolate &/or immunize those children at risk of contracting the disease speedily to prevent unnecessary spread of the disease PROVIDED AN UP-TO-DATE IMMUNIZATION RECORD WAS EASILY ACCESSIBLE. This bill would facilitate that record keeping.
- 3) This bill would assist the local health departments in their effort's to raise childhood immunization levels to 90%, thereby decreasing the chance of disease outbreak.

Senate Bill No. 175 Immunization Hearing House Human Services
Room 20 - Old Livestock 12:30 Noon Wednesday February 28 , 1979

I am David Lackman , lobbyist for the Montana Health Association , testifying in support of SB 175 , Pre-school immunization . At our annual meeting last fall , the Montana Health Association unanimously supported this legislation .

I am a Diplomate in Immunology of the American Board of Microbiology. ~~For~~ For 47 years I worked in the field of laboratory immunology to develop prophylactic vaccines , products for use in therapeutics , and the use of immunology in the diagnosis of disease. Experience has taught us that , for preventive medicine to be completely successful , some measure of government intervention is required. Many of us in the field can relate ~~xxxx~~ incidents which we don't wish to see happen again - but which will , unless we beef up vaccination programs.

When the Board of Health was created in Montana on March 15, 1901 , smallpox was one of the three most pressing problems. Its control and eradication is a classic example of the power of vaccination. Virulent diphtheria was re-introduced to the United States by prisoners-of-war from the N. African Campaign. At Camp Hood it spread to children in the civilian village ; and there were fatalities. This organism is still with us ; childhood vaccination is an important factor in its control.

Poliomyelitis is most vividly stamped in my memory. I lived through the epidemics of the thirties - powerless to do anything except try to control the spread of the virus; keep those with respiratory paralysis breathing with the iron lung; and experiment with physical therapy. During the 40's polio wasn't a serious epidemiological problem for the army. However , in the early 50's it again became a problem. One of the worst outbreaks was the one in Alaska in '54-'55. I worked with our epidemiologist when it hit the Pribiloffs- that was virgin territory for the virus - it was truly a heart-rending experience. (I am reminded of it daily as I swim with one of the victims of the outbreak - he came down 14 days after arriving in Seward - 14 days is the incubation period.) Such epidemics have largely disappeared due to use of the Sabin oral vaccine- but they could happen again ! Results of tests to determine the level of immunity in Montana revealed that only 30 percent of our population is immune to all three types. More attention to vaccination programs is needed.

Measles and German measles are other diseases for which effective vaccines have been developed. Yet we still have epidemics. Serious complications resulting in death or permanent disability sometimes follow clinical measles. Accumulating evidence suggests that latent , virulent measles virus is one of the viruses which can trigger the onset of the multiple sclerosis syndrome. German measles , contracted during pregnancy, causes a variety of developmental disabilities in the newborn infant . Prevention through vaccination is being emphasized in current thinking about developmental disabilities. Measles is a disease where theories of herd immunity break down . It is necessary to have 99% coverage to prevent the disease.

A valuable aspect of this bill is the provision for record keeping. Parents' memories are rather unreliable when it comes to vaccination histories.

I urge a do-pass recommendation for SB 175

David B. Lackman
February 28, 1979
1400 Julian Ave.
Helena, MT

Ellis, Ernst, Eudaily, Frates, Gesek, Gilligan, Gould, Hand, Harper, Harrington, Hemstad, Holmes, Huennekens, Hurwitz, Iverson, Jensen, Johnson, Johnston, Kanduch, Keedy, Kemmis, Kessler, Keyser, Kropp, Lien, Lory, McBride, Magone, Manning, Manuel, Menahan, Metcalf, Nordtvedt, Oberg, O'Connell, Pavlovich, Pistoria, Porter, Quilici, Ramirez, Reichert, H. Robbins, K. Robbins, Rosenthal, Schultz, Scully, Shelden, Spilker, Staigmiller, Teague, Thoft, Tropila, Uhde, Vincent, Waldron, Yardley, Mr. Speaker.

Total 71

Noes: Burnett, Conroy, Curtiss, Ellerd, Ellison, Hayne, Hirsch, Kvaalen, Lund, Marks, Moore, Nathe, Roth, Sales, Seifert, Smith, South, Stobie, Underdal, Vinger, Wood.

Total 21

Excused: Brand, Fagg, Feda, Meyer, Sivertsen, Williams, Wyrick.

Total 7

Absent or not voting: Fabrega.

Total 1

Dussault moved that the House adjourn until 3:30 p.m., March 1, 1979.

Motion carried.

House adjourned at 4:46 p.m.

HAROLD E. GERKE, Speaker

MARTHA B. McGEE, Chief Clerk

FORTY-EIGHTH LEGISLATIVE DAY

Helena, Montana

March 1, 1979

House Chambers

Capitol Building

House convened at 3:30 p.m., Mr. Speaker in the Chair. Invocation by the Chaplain. Pledge of Allegiance to the Flag.

Roll call. All members present except Day, Johnson, Meyer, Sivertsen, Teague, Thoft, excused; Azzara, absent. Quorum present.

REPORTS OF STANDING COMMITTEES

Do Pass

BUSINESS AND INDUSTRY (Quilici, Chairman):

3/1/79

SB 39, third reading copy, be amended as follows:

1. Page 18, line 1.

Following: "provisions of"

Strike: "30-14-205"

Insert: "30-14-206"

2. Page 18.

Following: line 9

Insert: "(2) A violation of 30-14-205 is punishable by imprisonment in the county jail for a period not less than 24 hours or more than 1 year or by fine not exceeding \$25,000, or both."

Renumber: subsequent subsection

And as amended, be concurred in. Report adopted.

SB 55, be concurred in. Report adopted.

SB 117, be concurred in. Report adopted.

SB 201, be concurred in. Report adopted.

SB 272, be concurred in. Report adopted.

SB 328, be concurred in. Report adopted.

EDUCATION AND CULTURAL RESOURCES (Gilligan, Chairman):

2/28/79

SJR 13, be concurred in. Report adopted.

SJR 17, be concurred in. Report adopted.

HUMAN SERVICES (Holmes, Chairman):

2/28/79

SB 109, third reading copy, be amended as follows:

1. Page 4, line 21 through line 5 on page 5.

Following: line 20

Strike: subsections (1) and (2) in their entirety

Renumber: subsequent subsections

And as amended, be concurred in. Report adopted.

SB 175, be concurred in. Report adopted.

Consent Calendar

Bill passed unanimously in committee and unanimously placed on Consent Calendar:

EDUCATION AND CULTURAL RESOURCES (Gilligan, Chairman):

2/28/79

SB 192, be concurred in. Report adopted.

HOUSE OF REPRESENTATIVES

March 2, 1979

Committee of the Whole amendment to SENATE BILL NO. 175, third reading copy.

1. Page 6, line 11.
Strike: "\$1,000"
Insert: "\$500"

AND AS AMENDED, BE CONCURRED IN.

SECOND READING OF BILLS (COMMITTEE OF THE WHOLE)

Dussault moved that the House resolve itself into a Committee of the Whole, for the consideration of business on Second Reading. Motion carried.

Lory in the Chair. Committee arose.

House resumed. Mr. Speaker in the Chair.

Mr. Speaker: We, your Committee of the Whole, having had under consideration business on Second Reading, recommend as follows:

That SB 39 be concurred in. (84-4)

That SB 55 be concurred in. (91-0)

That SB 109 be concurred in. (86-5)

That SB 117 be concurred in. (93-2)

Menahan moved that SB 150 be placed at the bottom of the board. Motion carried.

That SB 175, third reading copy, be amended as follows: (47-40)

1. Page 6, line 11.

Strike: "\$1,000"

Insert: "\$500"

And as amended, be concurred in. (77-12)

Williams moved that SB 190 be placed at the bottom of the board. Motion carried.

That SB 201 be concurred in. (83-1)

That SB 272 be concurred in. (86-0)

That SB 328 be concurred in. (84-3)

That SJR 13, third reading copy, be amended as follows: (90-0)

1. Page 2.

Following: line 1

Insert: "(4) That the Montana Arts Council coordinate their decisions with the plans of the Long-Range Planning Committee."

And as amended, be concurred in. (77-11)

That SJR 17 be concurred in. (79-5)

That SB 150 be concurred in. (76-8)

That SB 190, third reading copy, be amended as follows: (80-1)

1. Page 4, line 18.

Following: "elementary"

Strike: "or"

Insert: "school,"

Following: "high school"

Insert: ",,"

And as amended, be concurred in. (84-0)

Lory moved that the Committee of the Whole Report be deemed read. Motion carried.

3-2-79

That the Committee rise and report. (Lory, Chairman). Report adopted. (84-0)

THIRD READING OF BILLS

The following bills having been read three several times, title and history agreed to, were disposed of in the following manner:

Senate Bill No. 82 was concurred in by the following vote:

Ayes: Azzara, Bardanouve, Bengtson, Bennett, Bertelsen, Cooney, Dassinger, Day, Donaldson, Dozier, Dussault, Ellerd, Ellis, Ellison, Ernst, Eudaily, Fabrega, Fagg, Fed, Frates, Gesek, Gould, Hand, Harper, Hemstad, Hirsch, Holmes, Huennekens, Iverson, Jensen, Johnson, Johnston, Kanduch, Keedy, Kessler, Kvaalen, Lien, Lory, Lund, McBride, Manuel, Marks, Metcalf, Nathe, Nordtvedt, Oberg, Porter, Quilici, Ramirez, H. Robbins, K. Robbins, Rosenthal, Schultz, Shelden, Smith, South, Spilker, Teague, Thoft, Tropila, Uhde, Underdal, Vincent, Waldron, Williams, Wood, Yardley.
Total 67

Noes: Baeth, Brand, Burnett, Conroy, Curtiss, Hayne, Keyser, Kropp, Magone, Manning, Menahan, Moore, O'Connell, Pistoria, Roth, Seifert, Staigmiller, Stobie, Vinger, Mr. Speaker.
Total 20

Excused: Meyer, Pavlovich, Sivertsen.
Total 3

Absent or not voting: Anderson, Daily, Gilligan, Harrington, Hurwitz, Kemmis, Reichert, Sales, Scully, Wyrick.
Total 10

Senate Bill No. 84 was concurred in by the following vote:

Ayes: Azzara, Baeth, Bardanouve, Bengtson, Bennett, Bertelsen, Brand, Conroy, Cooney, Curtiss, Dassinger, Day, Donaldson, Dozier, Dussault, Ellis, Ellison, Ernst, Eudaily, Fabrega, Fagg, Frates, Gesek, Gould, Hand, Harper, Hayne, Hemstad, Hirsch, Holmes, Huennekens, Iverson, Jensen, Johnson, Johnston, Kanduch, Keedy, Kemmis, Kessler, Keyser, Kropp, Kvaalen, Lien, Lory, Lund, McBride, Magone, Manning, Manuel, Marks, Menahan, Metcalf, Moore, Oberg, O'Connell, Pistoria, Porter, Quilici, Ramirez, Reichert, H. Robbins, K. Robbins, Rosenthal, Roth, Schultz, Seifert, Shelden, South, Spilker, Staigmiller, Stobie, Teague, Tropila, Uhde, Underdal, Vincent, Waldron, Williams, Wood, Wyrick, Yardley, Mr. Speaker.
Total 82

Noes: Burnett, Ellerd, Fed, Nathe, Nordtvedt, Smith, Thoft, Vinger.
Total 8

Excused: Meyer, Pavlovich, Sivertsen.
Total 3

Absent or not voting: Anderson, Daily, Gilligan, Harrington, Hurwitz, Sales, Scully.
Total 7

Senate Bill No. 139 was concurred in by the following vote:

Ayes: Azzara, Baeth, Bardanouve, Bengtson, Bennett, Bertelsen, Brand, Burnett, Conroy, Cooney, Curtiss, Dassinger, Day, Donaldson, Dozier, Dussault, Ellerd, Ellis, Ellison, Ernst, Eudaily, Fabrega, Fagg, Fed, A.

Total 1

Excused: Huennekens.

Total 1

Absent or not voting: Burnett, Moore, South.

Total 3

Senate Bill No. 55 was concurred in by the following vote:

Ayes: Anderson, Azzara, Baeth, Bardanouve, Bengtson, Bennett, Bertelsen, Brand, Conroy, Cooney, Curtiss, Daily, Dassinger, Day, Donaldson, Dozier, Dussault, Ellerd, Ellis, Ellison, Ernst, Eudaily, Fabrega, Fagg, Fedra, Frates, Gesek, Gilligan, Gould, Hand, Harper, Harrington, Hayne, Hemstad, Hirsch, Holmes, Hurwitz, Iverson, Jensen, Johnson, Johnston, Kanduch, Keedy, Kemmis, Kessler, Keyser, Kropp, Kvaalen, Lien, Lory, Lund, McBride, Magone, Manning, Manuel, Marks, Menahan, Metcalf, Meyer, Moore, Nathe, Oberg, O'Connell, Pavlovich, Porter, Quilici, Ramirez, Reichert, H. Robbins, K. Robbins, Rosenthal, Roth, Sales, Schultz, Scully, Seifert, Shelden, Sivertsen, Smith, Spilker, Staigmilller, Stobie, Teague, Thoft, Tropila, Uhde, Underdal, Vincent, Vinger, Waldron, Williams, Wyrick, Yardley, Mr. Speaker.

Total 94

Noes: Nordtvedt, Pistoria.

Total 2

Excused: Huennekens.

Total 1

Absent or not voting: Burnett, South, Wood.

Total 3

Senate Bill No. 109 was concurred in by the following vote:

Ayes: Anderson, Azzara, Baeth, Bardanouve, Bengtson, Bennett, Bertelsen, Brand, Conroy, Cooney, Curtiss, Daily, Dassinger, Day, Donaldson, Dozier, Dussault, Ellerd, Ellis, Ellison, Ernst, Eudaily, Fabrega, Fagg, Fedra, Frates, Gesek, Gilligan, Gould, Hand, Harper, Harrington, Hayne, Hemstad, Hirsch, Holmes, Hurwitz, Iverson, Jensen, Johnson, Johnston, Kanduch, Keedy, Kemmis, Kessler, Keyser, Kropp, Kvaalen, Lien, Lory, Lund, McBride, Magone, Manning, Manuel, Marks, Menahan, Metcalf, Meyer, Nathe, Nordtvedt, Oberg, O'Connell, Pavlovich, Pistoria, Porter, Quilici, Ramirez, Reichert, H. Robbins, K. Robbins, Rosenthal, Roth, Sales, Schultz, Scully, Seifert, Shelden, Sivertsen, Smith, Spilker, Staigmilller, Teague, Thoft, Tropila, Uhde, Underdal, Vincent, Vinger, Waldron, Williams, Wood, Wyrick, Yardley, Mr. Speaker.

Total 95

Noes: Moore, Stobie.

Total 2

Excused: Huennekens.

Total 1

Absent or not voting: Burnett, South.

Total 2

Senate Bill No. 117 was concurred in by the following vote:

Ayes: Anderson, Azzara, Baeth, Bardanouve, Bengtson, Bennett, Bertelsen, Brand, Conroy, Cooney, Curtiss, Daily, Dassinger, Day, Donaldson, Dozier, Dussault, Ellerd, Ellis, Ellison, Ernst, Eudaily, Fabrega,

3rd Reading

Fagg, Fedra, Frates, Gesek, Gilligan, Gould, Hand, Harper, Harrington, Hayne, Hemstad, Hirsch, Holmes, Hurwitz, Iverson, Jensen, Johnson, Johnston, Kanduch, Keedy, Kemmis, Kessler, Keyser, Kropp, Kvaalen, Lien, Lory, Lund, McBride, Magone, Manning, Manuel, Marks, Menahan, Metcalf, Meyer, Nathe, Oberg, O'Connell, Pavlovich, Porter, Quilici, Ramirez, Reichert, H. Robbins, K. Robbins, Rosenthal, Roth, Schultz, Scully, Seifert, Shelden, Sivertsen, Smith, Spilker, Stobie, Teague, Thoft, Tropila, Uhde, Underdal, Vincent, Vinger, Waldron, Williams, Wood, Yardley, Mr. Speaker.

Total 91

Noes: Moore, Nordtvedt, Pistoria, Sales, Staigmilller.

Total 5

Excused: Huennekens.

Total 1

Absent or not voting: Burnett, South, Wyrick.

Total 3

Senate Bill No. 150 was concurred in by the following vote:

Ayes: Anderson, Azzara, Baeth, Bardanouve, Bengtson, Bennett, Bertelsen, Brand, Conroy, Cooney, Curtiss, Daily, Dassinger, Day, Donaldson, Dozier, Dussault, Ellerd, Ernst, Eudaily, Fabrega, Fagg, Fedra, Frates, Gesek, Gilligan, Gould, Hand, Harper, Harrington, Hayne, Hemstad, Hirsch, Holmes, Hurwitz, Iverson, Jensen, Johnson, Johnston, Kanduch, Keedy, Kemmis, Kessler, Keyser, Kropp, Kvaalen, Lien, Lory, Lund, McBride, Magone, Manning, Manuel, Marks, Menahan, Metcalf, Meyer, Moore, Nathe, Nordtvedt, Oberg, O'Connell, Pavlovich, Pistoria, Porter, Quilici, Ramirez, Reichert, H. Robbins, K. Robbins, Rosenthal, Roth, Sales, Schultz, Scully, Seifert, Shelden, Sivertsen, Smith, Spilker, Staigmilller, Teague, Thoft, Tropila, Uhde, Underdal, Vincent, Vinger, Waldron, Williams, Wood, Wyrick, Yardley, Mr. Speaker.

Total 94

Noes: Stobie.

Total 1

Excused: Huennekens.

Total 1

Absent or not voting: Burnett, Ellis, Ellison, South.

Total 4

Senate Bill No. 175 was concurred in by the following vote:

Ayes: Anderson, Azzara, Baeth, Bardanouve, Bengtson, Bennett, Bertelsen, Brand, Conroy, Cooney, Daily, Dassinger, Donaldson, Dozier, Dussault, Ellerd, Ellis, Ellison, Ernst, Eudaily, Fabrega, Fagg, Frates, Gesek, Gilligan, Gould, Hand, Harper, Harrington, Hemstad, Hirsch, Holmes, Hurwitz, Iverson, Jensen, Johnson, Johnston, Kanduch, Keedy, Kemmis, Kessler, Kropp, Lien, Lory, Lund, McBride, Magone, Manning, Manuel, Marks, Menahan, Metcalf, Moore, Nordtvedt, Oberg, O'Connell, Pavlovich, Pistoria, Porter, Quilici, Ramirez, Reichert, H. Robbins, K. Robbins, Rosenthal, Sales, Schultz, Scully, Seifert, Shelden, Sivertsen, Staigmilller, Teague, Thoft, Tropila, Uhde, Vincent, Vinger, Waldron, Williams, Wood, Wyrick, Yardley, Mr. Speaker.

Total 84

Noes: Curtiss, Day, Fedra, Hayne, Keyser, Kvaalen, Nathe, Roth, Smith, Spilker, Stobie, Underdal.

54

Total 12

Excused: Huennekens.

Total 1

Absent or not voting: Burnett, Meyer, South.

Total 3

Senate Bill No. 190 was concurred in by the following vote:

Ayes: Anderson, Baeth, Bardanouve, Bengtson, Bennett, Bertelsen, Brand, Conroy, Cooney, Curtiss, Daily, Dassinger, Day, Donaldson, Dozier, Dussault, Ellerd, Ellis, Ellison, Ernst, Eudaily, Fabrega, Fagg, Fedá, Frates, Gesek, Gilligan, Gould, Hand, Harper, Harrington, Hayne, Hemstad, Hirsch, Holmes, Hurwitz, Iverson, Jensen, Johnson, Johnston, Kanduch, Keedy, Kemmis, Kessler, Keyser, Kropp, Kvaalen, Lien, Lory, Lund, McBride, Magone, Manning, Manuel, Marks, Menahan, Metcalf, Meyer, Moore, Nathe, Oberg, O'Connell, Pavlovich, Pistoria, Porter, Quilici, Ramirez, Reichert, H. Robbins, K. Robbins, Rosenthal, Roth, Schultz, Scully, Seifert, Shelden, Sivertsen, Spilker, Staigmiller, Stobie, Teague, Thoft, Tropila, Uhde, Underdal, Vincent, Vinger, Waldron, Williams, Wood, Wyrick, Yardley, Mr. Speaker.

Total 93

Noes: Nordtvedt, Sales, Smith.

Total 3

Excused: Huennekens.

Total 1

Absent or not voting: Azzara, Burnett, South.

Total 3

Senate Bill No. 201 was concurred in by the following vote:

Ayes: Anderson, Azzara, Baeth, Bardanouve, Bengtson, Bennett, Bertelsen, Brand, Conroy, Cooney, Curtiss, Daily, Dassinger, Day, Donaldson, Dozier, Dussault, Ellerd, Ellis, Ellison, Ernst, Eudaily, Fabrega, Fagg, Fedá, Frates, Gesek, Gilligan, Gould, Hand, Harper, Harrington, Hayne, Hemstad, Hirsch, Holmes, Hurwitz, Iverson, Jensen, Johnson, Johnston, Kanduch, Keedy, Kemmis, Kessler, Keyser, Kropp, Kvaalen, Lien, Lory, Lund, McBride, Magone, Manning, Manuel, Marks, Menahan, Metcalf, Meyer, Moore, Nathe, Nordtvedt, Oberg, O'Connell, Pavlovich, Pistoria, Porter, Quilici, Ramirez, Reichert, H. Robbins, K. Robbins, Rosenthal, Roth, Sales, Schultz, Scully, Seifert, Shelden, Sivertsen, Smith, Spilker, Staigmiller, Stobie, Teague, Thoft, Tropila, Uhde, Underdal, Vincent, Vinger, Waldron, Williams, Wood, Wyrick, Yardley, Mr. Speaker.

Total 97

Noes: None.

Total 0

Excused: Huennekens.

Total 1

Absent or not voting: Burnett, South.

Total 2

Senate Bill No. 272 was concurred in by the following vote:

Ayes: Anderson, Azzara, Baeth, Bardanouve, Bengtson, Bertelsen, Brand, Conroy, Cooney, Curtiss, Daily, Dassinger, Day, Donaldson, Dozier, Dussault, Ellerd, Ellis, Ellison, Ernst, Eudaily, Fabrega, Fagg, Fedá,

Frates, Gesek, Gilligan, Gould, Hand, Harper, Harrington, Hayne, Hemstad, Hirsch, Holmes, Hurwitz, Iverson, Jensen, Johnson, Johnston, Kanduch, Keedy, Kemmis, Kessler, Keyser, Kropp, Kvaalen, Lien, Lory, Lund, McBride, Magone, Manning, Manuel, Marks, Menahan, Metcalf, Meyer, Moore, Nathe, Nordtvedt, Oberg, O'Connell, Pavlovich, Pistoria, Porter, Quilici, Ramirez, Reichert, H. Robbins, K. Robbins, Rosenthal, Roth, Sales, Schultz, Scully, Seifert, Shelden, Sivertsen, Smith, Spilker, Staigmiller, Stobie, Teague, Thoft, Tropila, Uhde, Underdal, Vincent, Vinger, Waldron, Williams, Wood, Wyrick, Yardley, Mr. Speaker.

Total 96

Noes: None.

Total 0

Excused: Huennekens.

Total 1

Absent or not voting: Bennett, Burnett, South.

Total 3

Senate Bill No. 328 was concurred in by the following vote:

Ayes: Anderson, Azzara, Baeth, Bardanouve, Bengtson, Bennett, Bertelsen, Burnett, Conroy, Cooney, Curtiss, Daily, Dassinger, Day, Donaldson, Dozier, Dussault, Ellerd, Ellis, Ellison, Ernst, Eudaily, Fabrega, Fagg, Fedá, Frates, Gesek, Gilligan, Gould, Hand, Harper, Harrington, Hayne, Hemstad, Hirsch, Holmes, Hurwitz, Iverson, Jensen, Johnson, Johnston, Kanduch, Keedy, Kemmis, Kessler, Kropp, Kvaalen, Lien, Lory, Lund, McBride, Magone, Manning, Manuel, Marks, Menahan, Metcalf, Meyer, Moore, Nathe, Nordtvedt, Oberg, O'Connell, Pavlovich, Pistoria, Porter, Quilici, Ramirez, Reichert, H. Robbins, K. Robbins, Rosenthal, Sales, Schultz, Scully, Shelden, Sivertsen, Spilker, Staigmiller, Stobie, Teague, Thoft, Tropila, Uhde, Underdal, Vincent, Vinger, Waldron, Williams, Wood, Wyrick, Yardley, Mr. Speaker.

Total 93

Noes: Brand, Keyser, Roth, Seifert, Smith.

Total 5

Excused: Huennekens.

Total 1

Absent or not voting: South.

Total 1

Senate Joint Resolution No. 13 was concurred in by the following vote:

Ayes: Anderson, Azzara, Baeth, Bardanouve, Bengtson, Bennett, Bertelsen, Brand, Burnett, Conroy, Cooney, Curtiss, Daily, Dassinger, Day, Donaldson, Dozier, Dussault, Ellis, Ernst, Eudaily, Fabrega, Fagg, Fedá, Frates, Gesek, Gilligan, Gould, Hand, Harper, Harrington, Hayne, Hemstad, Hirsch, Holmes, Hurwitz, Iverson, Johnson, Johnston, Kanduch, Keedy, Kemmis, Kessler, Keyser, Kropp, Kvaalen, Lien, Lory, Lund, McBride, Magone, Manning, Manuel, Marks, Menahan, Metcalf, Meyer, Nathe, Nordtvedt, Oberg, O'Connell, Pavlovich, Porter, Quilici, Ramirez, Reichert, H. Robbins, Rosenthal, Sales, Schultz, Scully, Shelden, Sivertsen, Spilker, Teague, Tropila, Uhde, Underdal, Vincent, Waldron, Wood, Yardley, Mr. Speaker.

Total 83

Noes: Ellerd, Jensen, Moore, K. Robbins, Roth, Seifert, Smith, Staigmiller, Stobie, Thoft, Vinger, Wyrick.

And, that the Conference Committee Report to Senate Bill No. 78 be adopted.

FOR THE SENATE:

Turnage, Chairman
B. Brown
Van Valkenburg

Report adopted.

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

The following Senate Bills were on 3/5/79, concurred in on Third Reading Consent Calendar and returned to the Senate:

Senate Bill No. 179, introduced by Hager, Kessler

Senate Bill No. 192, introduced by Thiessen, Ryan, et al

Senate Bill No. 297, introduced by Hager

The following Senate Bill was on 3/5/79, on Committee of the Whole, not concurred in, report adopted, and returned to the Senate:

Senate Bill No. 246, introduced by Hager, B. Brown, et al

The House on 3/5/79, acceded to the request of the Senate for the return of House Joint Resolution No. 8 for further consideration.

The following Senate Bills were on 3/5/79, concurred in as amended and returned to the Senate for concurrence in House Amendments:

Senate Bill No. 39, introduced by Hazelbaker, Goodover

Senate Bill No. 109, introduced by Ryan, Rasmussen

Senate Bill No. 175, introduced by Van Valkenburg, Olson, et al

Senate Bill No. 190, introduced by Stimatz

The following Senate Bills were on 3/5/79, concurred in and returned to the Senate:

Senate Bill No. 55, introduced by Hazelbaker, Goodover, et al

Senate Bill No. 117, introduced by Himsl, Olson, et al

Senate Bill No. 150, introduced by Mehrens, Peterson, et al

Senate Bill No. 201, introduced by Lowe, Mathers, et al

Senate Bill No. 272, introduced by Lowe

Senate Bill No. 328, introduced by Lowe, Mathers, et al

The following Senate Joint Resolution was on 3/5/79, concurred in as amended and returned to the Senate for concurrence in House Amendments:

Senate Joint Resolution No. 13, introduced by Blaylock, Regan, et al

The following Senate Joint Resolution was on 3/5/79, concurred in and returned to the Senate.

Senate Joint Resolution No. 17, introduced by Manley, Bertelsen, Ryan

The House on 3/5/79, on motion duly carried, requests the return of the following Senate Bill for further consideration:

Senate Bill No. 251, introduced by Boylan

MOTIONS

Upon motion of Senator Stephens, duly carried, that House Bill No. 837 and House Joint Resolution No. 46 be taken from the Committee on State Administration and be rereferred to the Committee on Rules.

Upon motion of Senator Stephens, duly carried, that House Bill No. 833 be taken from the Committee on Judiciary and be rereferred to the Committee on Rules.

Upon motion of Senator Stephens, duly carried, that House Bill No. 387 be taken from the Committee on Local Government and be rereferred to the Committee on Rules.

Upon motion of Senator Stephens, duly carried, that consideration of House Joint Resolution No. 26 be passed on Second Reading for this Legislative Day.

Motion was made by Senator Jergeson that House Bill No. 251 be taken from the Committee on Agriculture, Livestock, and Irrigation and be placed on Second Reading. Motion carried by the following roll call vote:

Ayes: Blaylock, S. Brown, Conover, Fasbender, Graham, Healy, Himsl, Jergeson, Kolstad, Manley, Manning, Mehrens, Norman, Olson, Palmer, Peterson, Rasmussen, Regan, Ryan, Severson, R. Smith, Stimatz, Thiessen, Thomas, Towe, Van Valkenburg, Watt.
Total 27

Noes: Aklestad, Anderson, Boylan, B. Brown, Dover, Etchart, Galt, Goodover, Hafferman, Hager, Hazelbaker, Lensink, McCallum, Nelson, O'Hara, Roskie, E. Smith, Stephens, Story, Turnage, Mr. President.
Total 21

Excused: Lockrem, Lowe.
Total 2

Absent or not voting: None.
Total 0

Senator Watt moved that the Senate reconsider the indefinite postponement taken on Committee of the Whole on Senate Bill No. 240, March 5, 1979. Motion failed by the following roll call vote:

Ayes: Blaylock, Boylan, B. Brown, Conover, Fasbender, Hafferman, Healy, Jergeson, Kolstad, Manley, Manning, Mehrens, Norman, Palmer, Peterson, Rasmussen, Regan, Ryan, R. Smith, Stimatz, Thiessen, Towe, Van Valkenburg, Watt.
Total 24

Noes: Aklestad, Anderson, S. Brown, Dover, Etchart, Galt, Goodover, Graham, Hager, Hazelbaker, Himsl, Lensink, Lowe, McCallum, Nelson, Olson, O'Hara, Roskie, Severson, E. Smith, Stephens, Story, Thomas, Turnage, Mr. President.
Total 25

Excused: Lockrem.
Total 1

Absent or not voting: None.
Total 0

(Including the following pair: Blaylock, aye - Lowe, no.)

2nd reading

Senator Kolstad relinquished the Chair.

Senator Goodover assumed the Chair.

That House Joint Resolution No. 8 be concurred in. Unanimously concurred in.

That House Amendments to Senate Bill No. 39 be concurred in. Unanimously concurred in.

That House Amendments to Senate Bill No. 109 be concurred in. Unanimously concurred in.

That House Amendments to Senate Bill No. 175 be concurred in. Unanimously concurred in.

That House Amendments to Senate Bill No. 190 be concurred in. Unanimously concurred in.

That House Amendments to Senate Joint Resolution No. 13 be concurred in. Unanimously concurred in.

That the Joint Conference Committee Report on House Amendments to Senate Bill No. 78 be adopted. Opposed by Towe.

That House Bill No. 61 be concurred in. Unanimously concurred in.

That House Bill No. 466 be amended as follows:

1. Title, line 11.
Following: "15-56-103,"
2. Page 10, line 15 through 8 on page 12.
Strike: section 16 in its entirety
Renumber: subsequent sections

And, as so amended, be concurred in. Unanimously concurred in.

Senator Goodover relinquished the Chair.

Senator Kolstad assumed the Chair.

That House Bill No. 606 be amended as follows:

1. Page 2, line 8.
Following: "who"
Strike: "have been"
Insert: "are"
2. Page 2, line 9.
Following: "state"
Strike: remainder of line 9 through "appointment" on line 10

(Amendments opposed by Aklestad, Boylan, Etchart, Galt, Goodover, Hager, Hazelbaker, Kolstad, Lowe, Nelson, O'Hara, Palmer, Roskie, Ryan, Severson, E. Smith, Story.)

And, as so amended, be concurred in. Opposed by Jergeson, Thiessen.

The Statement of Intent on House Bill No. 606 was adopted. Opposed by Boylan, Hafferman, Himsl, Jergeson, Lockrem, Rasmussen, R. Smith, Thiessen, Watt.

STATEMENT OF INTENT: House Bill No. 606

A Statement of Intent is required for House Bill No. 606 in that it delegates rulemaking authority to the Board of Realty Regulation in Section 8.

1. Section 8 allows the Board to prescribe rules relating to: (a) provisions for advertising standards to assure full and fair disclosure; (b) provisions for escrow or trust agreements or other means reasonably to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for; (c) provisions for operating procedures; and (d) other rules necessary and proper to accomplish the purpose of this part." It is intended that only those rules necessary to carry out the above functions will be adopted by the Board of Realty Regulation. All rules should have as their primary purpose the protection of the public. No rules may be adopted which restrict entry into the real estate industry except as expressly authorized by statute.

First adopted by the Senate Committee of the Whole on March 7, 1979.

That the Committee rise and report. (Kolstad, Chairman)

Senator Watt moved that House Bill No. 466 be segregated from the Committee of the Whole Report. Motion carried unanimously.

Upon motion of Senator Goodover, duly carried, the foregoing Report of the Committee of the Whole was adopted as amended.

At the request of the President Pro Tempore, and without objection, the Senate reverted to Order of Business No. 6.

MOTIONS

Upon motion of Senator Turnage, duly carried, that House Bill No. 708 be taken from the Committee on Highways and Transportation and be rereferred to the Committee on Judiciary.

Upon motion of Senator Blaylock, duly carried, that House Bill No. 606 be taken from the Committee on Bills and Journal and be rereferred to the Committee on Rules.

SPECIAL ORDERS OF THE DAY

Consent Calendar.

HB 548 - Discussion

HB 650 - Discussion

Upon motion of E. Smith, duly carried, the Senate adjourned at 6:34 p.m. until Thursday, March 8, at the hour of 3:00 p.m.

ALLEN C. KOLSTAD
President Pro Tempore
of the Senate

DENNIS D. CASEY
Secretary of the Senate

Total 0

House Amendments to Senate Bill No. 175 were concurred in by the following vote:

Ayes: Aklestad, Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Dover, Etchart, Fasbender, Galt, Goodover, Graham, Hager, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lensink, Lockrem, Lowe, Manley, Manning, McCallum, Mehrens, Nelson, Norman, Olson, O'Hara, Palmer, Peterson, Regan, Roskie, Ryan, Severson, E. Smith, Stephens, Stimatz, Story, Thiessen, Thomas, Towe, Turnage, Van Valkenburg, Watt, Mr. President.

Total 47

Noes: Hafferman.

Total 1

Excused: Rasmussen, R. Smith.

Total 2

Absent or not voting: None.

Total 0

House Amendments to Senate Bill No. 190 were concurred in by the following vote:

Ayes: Aklestad, Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Dover, Etchart, Fasbender, Galt, Goodover, Graham, Hafferman, Hager, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lensink, Lockrem, Lowe, Manley, Manning, McCallum, Mehrens, Nelson, Norman, Olson, O'Hara, Palmer, Peterson, Regan, Roskie, Ryan, Severson, E. Smith, Stephens, Stimatz, Story, Thiessen, Thomas, Towe, Turnage, Van Valkenburg, Watt, Mr. President.

Total 48

Noes: None.

Total 0

Excused: Rasmussen, R. Smith.

Total 2

Absent or not voting: None.

Total 0

House Amendments to Senate Joint Resolution No. 13 were concurred in by the following vote:

Ayes: Aklestad, Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Dover, Etchart, Fasbender, Graham, Hafferman, Hager, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lensink, Lockrem, Manning, McCallum, Mehrens, Nelson, Norman, Olson, Palmer, Peterson, Regan, Ryan, E. Smith, Stephens, Stimatz, Story, Thiessen, Thomas, Towe, Turnage, Van Valkenburg, Watt, Mr. President.

Total 41

Noes: Galt, Goodover, Lowe, Manley, O'Hara, Roskie, Severson.

Total 7

Excused: Rasmussen, R. Smith.

Total 2

Absent or not voting: None.

Total 0

Conference Committee Report on House Amendments to Senate Bill No. 78 was adopted by the following vote:

Ayes: Aklestad, Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Dover, Etchart, Fasbender, Galt, Goodover, Graham, Hafferman, Hager, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lensink, Lockrem, Lowe, Manley, Manning, McCallum, Mehrens, Nelson, Norman, Olson, O'Hara, Palmer, Peterson, Regan, Ryan, Severson, E. Smith, Stephens, Stimatz, Story, Thiessen, Thomas, Turnage, Van Valkenburg, Watt, Mr. President.

Total 46

Noes: Towe.

Total 1

Excused: Rasmussen, R. Smith.

Total 2

Absent or not voting: Roskie.

Total 1

CONSENT CALENDAR

House Bill No. 548 was concurred in by the following vote:

Ayes: Aklestad, Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Dover, Etchart, Fasbender, Galt, Goodover, Graham, Hafferman, Hager, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lensink, Lockrem, Lowe, Manley, Manning, McCallum, Mehrens, Nelson, Norman, Olson, O'Hara, Palmer, Peterson, Regan, Roskie, Ryan, Severson, E. Smith, Stephens, Stimatz, Story, Thiessen, Thomas, Towe, Turnage, Van Valkenburg, Watt, Mr. President.

Total 48

Noes: None.

Total 0

Excused: Rasmussen, R. Smith.

Total 2

Absent or not voting: None.

Total 0

House Bill No. 650 was concurred in by the following vote:

Ayes: Aklestad, Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Dover, Etchart, Fasbender, Galt, Goodover, Graham, Hafferman, Hager, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lensink, Lockrem, Lowe, Manley, Manning, McCallum, Mehrens, Nelson, Norman, Olson, O'Hara, Palmer, Peterson, Regan, Roskie, Ryan, Severson, E. Smith, Stephens, Stimatz, Story, Thiessen, Thomas, Towe, Turnage, Van Valkenburg, Watt, Mr. President.

Total 48

Noes: None.

Total 0

Excused: Rasmussen, R. Smith.

Total 2

Absent or not voting: None.

Total 0

At the request of the President, and without objection, the Senate reverted to Order of Business No. 8.

SENATE BILL NO. 175

INTRODUCED BY VAN VALKENBURG, OLSON, COONEY, ELLIS,

BENNETT, TURNAGE, HIMSL, TOWE, B. BROWN

BY REQUEST OF THE DEPARTMENT

OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR
IMMUNIZATION OF PUPILS IN PUBLIC AND PRIVATE SCHOOLS;
REPEALING SECTION 20-5-401, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. For the purposes of [this
act], the following definitions apply:

(1) "Department" means the department of health and
environmental sciences provided for in Title 2, chapter 15,
part 21.

(2) "Governing authority" means ~~a trustee~~ THE BOARD OF
TRUSTEES of a school district ~~or a principal or an~~ OR THE
~~administratory or any other authority~~ of a private or public
school ~~responsible for the operation of the school~~.

(3) "Immunization" means induction of a state of
resistance to a disease through administration of an
immunizing agent.

(4) "Local health officer or department" means a city,
city-county, county, or district health officer or

department.

(5) "School" means an institution for the teaching of
individuals, the curriculum of which is comprised of the
work of any combination of kindergarten through grade 12.

Section 2. Immunization required. ~~(1)~~ A governing
authority may not enroll any person as a pupil in any school
unless, prior to enrollment, the person:

~~(1)(A)~~ has been immunized against diphtheria,
pertussis, tetanus, poliomyelitis, rubella, and measles
(rubeola) in the manner and with immunizing agents approved
by the department, except that pertussis vaccination is not
required for a person 7 years of age or older;

~~(2)(B)~~ qualifies for conditional enrollment; or

~~(3)(C)~~ files for an exemption.

~~(2) FAILURE TO ACT AS PROVIDED IN SUBSECTION (1) IN A~~
~~REASONABLE PERIOD OF TIME, AS DETERMINED BY THE BOARD OF~~
~~TRUSTEES, IS AN EXEMPTION ON THE GROUNDS PROVIDED IN~~
~~[SUBSECTION (1) OF SECTION 4].~~

Section 3. Conditional enrollment. A person who has
not been immunized against each disease listed in [section
2] may be enrolled by the governing authority on condition
that he has received one or more doses of polio, measles
(rubeola), rubella, diphtheria, pertussis, and tetanus
vaccine, except that pertussis vaccine is not required for a
person 7 years of age or older.

1 Section 4. Personal, religious, or medical exemption.

2 (1) When a parent, guardian, or adult who has the
3 responsibility for the care and custody of a minor seeking
4 enrollment, or the person seeking enrollment, if an adult,
5 signs and files with the governing authority a written
6 statement on a form prescribed by the department stating
7 that immunization is contrary to the personal or religious
8 beliefs of the signer, immunization of the person seeking
9 enrollment may not be required prior to enrollment in any
10 school. The statement must be maintained as part of the
11 person's immunization records.

12 (2) When a parent, guardian, or adult who has the
13 responsibility for the care and custody of a minor seeking
14 enrollment, or the person seeking enrollment, if an adult,
15 files with the governing authority a written statement
16 signed by a physician licensed to practice medicine in any
17 jurisdiction of the United States or Canada stating that the
18 physical condition of the person seeking enrollment or
19 medical circumstances relating to him indicate that some or
20 all of the required immunizations are not considered safe
21 and indicating the specific nature and probable duration of
22 the medical condition or circumstances which contraindicate
23 immunization, he is exempt from the requirements of [this
24 act] to the extent indicated by the physician's statement.
25 The statement must be maintained as part of the person's

1 immunization records.

2 (3) Whenever there is good cause to believe that a
3 person for whom an exemption has been filed under this
4 section has a disease or has been exposed to a disease
5 listed in [section 2] or will as the result of school
6 attendance be exposed to such disease, the person may be
7 excluded from the school by the local health officer or the
8 department until the excluding authority is satisfied that
9 the person no longer risks contracting or transmitting that
10 disease. The exclusion period may not exceed 30 calendar
11 days.

12 Section 5. Immunization record. The governing
13 authority of each school shall require written evidence of
14 each pupil's immunization against the diseases listed in
15 [section 2] and shall record the immunization of each pupil
16 as part of his permanent school record on a form prescribed
17 by the department.

18 Section 6. Rulemaking. The department may adopt rules
19 necessary to implement the provisions of [this act].

20 Section 7. Enforcement. (1) The governing authority of
21 any school shall prohibit from further attendance any pupil
22 enrolled conditionally who has failed to obtain the
23 immunizations required by [section 2(1)] within time periods
24 established by the department until that pupil has been
25 immunized as required by the department or unless that pupil

1 has been exempted under [section 4].

2 (2) Each governing authority shall file a written
3 report on the immunization status of all pupils under its
4 jurisdiction with the department and the local health
5 department at times and on forms prescribed by the
6 department.

7 (3) The local and state health departments shall have
8 access to all information relating to immunization of any
9 pupil in any school.

10 Section 8. Failure to immunize or claim exemption --
11 injunction. (1) A parent, guardian, or adult having the
12 responsibility for the care and custody of a minor required
13 by law to attend school shall elect to do one of the
14 following:

15 (a) present evidence to the school that the minor has
16 been immunized against the diseases specified in [section
17 2];

18 (b) take action to fully immunize the minor against
19 the diseases listed in [section 2], in the manner and with
20 immunizing agents approved by the department;

21 (c) file for an exemption pursuant to [section 4].

22 (2) If, as a result of the parent, guardian, or
23 responsible adult's failure to make the election referred to
24 in subsection (1), the minor is excluded from school, the
25 department or the local health department may seek an

1 injunction requiring the parent, guardian, or responsible
2 adult to elect and perform one of the alternatives listed in
3 subsection (1).

4 (3) Injunction is the exclusive remedy for failure to
5 take any of the actions referred to in subsection (1).

6 Section 9. Civil penalty. (1) Any person who violates
7 any provision of [this act], any rule promulgated under
8 [this act], or any order made pursuant to [this act], with
9 the exception of [section 8] and any rule adopted or order
10 issued pursuant to [section 8], is subject to a civil
11 penalty not to exceed \$1,000 ~~\$500~~. The department or the
12 local health department may institute and maintain any
13 enforcement proceedings hereunder.

14 (2) Action under subsection (1) is not a bar to
15 enforcement of [this act] or of rules or orders made under
16 it by injunction or other appropriate civil remedies.

17 (3) An action for a civil remedy to enforce [this act]
18 or rules or orders made under it may be brought in the
19 district court of any county where a violation occurs or is
20 threatened.

21 Section 10. Severability. If part of this act is
22 invalid, all valid parts that are severable from the invalid
23 part remain in effect. If a part of this act is invalid in
24 one or more of its applications, the part remains in effect
25 in all valid applications that are severable from the

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1 invalid applications.

2 Section 11. Codification. The code commissioner shall
3 codify this act as an integral part of Title 20, and the
4 provisions of Title 20 apply to this act.

5 Section 12. Applicability. Sections 1 through 5 and
6 sections 7 through 9 apply after August 1, 1980.

7 Section 13. Repealer. Section 20-5-401, MCA, is
8 repealed effective August 1, 1980.

-End-